No. 16-1220

In the Supreme Court of the United States

ANIMAL SCIENCE PRODUCTS, INC., *et al.*,

Petitioners,

v.

HEBEI WELCOME PHARMACEUTICAL CO. LTD., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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CERTIORARI GRANTED JANUARY 12, 2018

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12/23/2013	1	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellants Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED. [1123554] [13-4791] [Entered: 12/30/2013 03:12 PM]
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1/15/2014	21	AMENDED NOTICE OF APPEAL, with copy of district court docket, on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED.[1135468] [13-4791] [Entered: 01/16/2014 10:25 AM]
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4/7/2014	98	PAGE PROOF BRIEF, on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED. Service date 04/07/2014 by CM/ECF. [1196447] [13-4791] [Entered: 04/07/2014 04:34 PM]
		* * *
4/14/2014	105	AMICUS BRIEF, on behalf of Amicus Curiae Ministry of Commerce of the People's Republic of China, FILED. Service date 04/14/2014 by CM/ECF. [1201317] [13-4791]--[Edited 04/16/2014 by KG] [Entered: 04/14/2014 12:53 PM]
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5/23/2014	111	MOTION, for judicial notice, on behalf of Amicus Curiae Ministry of Commerce of the People's Republic of China, FILED. Service date 05/23/2014 by CM/ECF. [1232707] [13-4791] [Entered: 05/23/2014 03:58 PM]
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7/7/2014	128	PAGE PROOF BRIEF, on behalf of Appellee Animal Science Products, Inc. and The Ranis Company, Inc.,

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7/28/2014 159 JOINT APPENDIX, volume 5 of 15, (pp. 1201-1500), on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED. Service date 07/28/2014 by CM/ECF.[1280894] [13-4791] [Entered: 07/28/2014 03:01 PM]

7/28/2014 160 JOINT APPENDIX, volume 6 of 15, (pp. 1501-1800), on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED. Service date 07/28/2014 by CM/ECF.[1280897] [13-4791] [Entered: 07/28/2014 03:02 PM]

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7/28/2014	166	JOINT APPENDIX, volume 12 of 15, (pp. 3301-3600), on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED. Service date 07/28/2014 by CM/ECF.[1280958] [13-4791] [Entered: 07/28/2014 03:27 PM]
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8/12/2014	179	SUPPLEMENTAL APPENDIX, on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, FILED. Service date 08/12/2014 by CM/ECF. [1292621] [13-4791] [Entered: 08/12/2014 10:47 AM]

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11/7/2014	202	MOTION ORDER, granting motion for oral argument [135] filed by Amicus Curiae Ministry of Commerce of the People's Republic of China, FILED. [1365538][202] [13-4791] [Entered: 11/07/2014 04:25 PM]

* * *

12/2/2014	212	FRAP 28(j) LETTER, dated 12/02/2014, on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, RECEIVED. Service date 12/02/2014 by CM/ECF.[1382500] [13-4791] [Entered: 12/02/2014 02:09 PM]
12/4/2014	214	FRAP 28(j) LETTER, dated 12/04/2014, on behalf of Appellee Animal Science Products, Inc. and The Ranis Company, Inc., RECEIVED. Service date 12/04/2014 by CM/ECF.[1384983] [13-4791] [Entered: 12/04/2014 02:02 PM]

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1/29/2015	221	CASE, before JAC, RCW, PWH, C.JJ., HEARD.[1426294] [13-4791] [Entered: 01/29/2015 03:24 PM]

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8/21/2015	232	FRAP 28(j) LETTER, dated 08/21/2015, on behalf of Appellee Animal Science Products, Inc. and The Ranis Company, Inc., RECEIVED. Service date 08/21/2015 by CM/ECF.[1582596] [13-4791] [Entered: 08/21/2015 06:52 PM]

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8/24/2015	236	FRAP 28(j) LETTER, dated 08/24/2015, on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, RECEIVED. Service date 08/24/2015 by CM/ECF.[1583567] [13-4791] [Entered: 08/24/2015 05:45 PM]

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1/5/2016	240	FRAP 28(j) LETTER, dated 01/05/2016, on behalf of Appellant Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, RECEIVED. Service date 01/05/2016 by CM/ECF.[1676495] [13-4791] [Entered: 01/05/2016 02:40 PM]

1/6/2016	242	FRAP 28(j) LETTER, dated 01/06/2016, on behalf of Appellee Animal Science Products, Inc. and The Ranis Company, Inc., RECEIVED. Service date 01/06/2016 by CM/ECF.[1677273] [13-4791] [Entered: 01/06/2016 11:20 AM]
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9/20/2016	247	OPINION, vacating the district court's judgment entered November 27, 2013, reversing the order of November 11, 2008 and remanding with instructions to dismiss Plaintiffs' complaint with prejudice, by JAC, RCW, PWH, FILED.[1866427] [13-4791] [Entered: 09/20/2016 10:15 AM]
9/20/2016	249	CERTIFIED ORDER, dated 09/20/2016, to EDNY (BROOKLYN), ISSUED.[1866434] [13-4791] [Entered: 09/20/2016 10:18 AM]
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9/20/2016	253	JUDGMENT, FILED.[1866914] [13-4791] [Entered: 09/20/2016 03:07 PM]
		* * *
10/4/2016	255	PETITION FOR REHEARING/ REHEARING EN BANC, on behalf of Appellee Animal Science Products, Inc. and The Ranis Company, Inc., FILED. Service date 10/04/2016 by CM/ECF.[1877303] [13-4791] [Entered: 10/04/2016 05:10 PM]

11/4/2016	259	ORDER, petition for rehearing en banc denied, FILED.[1900649] [13-4791] [Entered: 11/04/2016 01:36 PM]
11/14/2016	261	JUDGMENT MANDATE, ISSUED. [1905900] [13-4791] [Entered: 11/14/2016 01:51 PM]

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1/10/2017	267	U.S. SUPREME COURT NOTICE, granting Appellee Animal Science Products, Inc. extension to file Writ of Certiorari, FILED.[1944646] [13-4791] [Entered: 01/10/2017 04:51 PM]

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4/13/2017	269	U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 04/12/2017, U.S. Supreme Court docket # 16-1220, RECEIVED.[2011246] [13-4791] [Entered: 04/13/2017 04:12 PM]
1/12/2018	270	U.S. SUPREME COURT NOTICE, dated 01/12/2018, U.S. Supreme Court docket # 16-1220, stating the petition for writ of certiorari is granted, RECEIVED.[2214448] [13-4791] [Entered: 01/16/2018 04:34 PM]

RELEVANT DOCKET ENTRIES FROM THE U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK (BROOKLYN) CIVIL DOCKET FOR CASE #: 1:06-MD-01738-BMC-JO

Date Filed	#	Docket Text
2/15/2006	1	Letter dated February 14, 2006 from the MDL Panel, enclosing a copy of the Panels Transfer Order consolidating this MDL action in EDNY, and assigning it to Judge Trager. (Attachments: # 1 MDL Transfer Order)Associated Cases: 1:06-md-01738-DGT-RML,1:05-cv-00453-DGT-RML,1:05-cv-06059-DGT-RML,1:06-cv-00149-DGT-RML(Brown, Marc) (Entered: 02/22/2006)
		* * *
3/8/2006		NOTICE - This matter is being reassigned from Magistrate Judge Robert M. Levy to Magistrate Judge James Orenstein for pretrial supervision.Associated Cases: 1:06-md-01738-DGT-RML,1:05-cv-00453-DGT-RML,1:05-cv-06059-DGT-RML,1:06-cv-00149-DGT-RML(Marino, Janine) (Entered: 03/08/2006)
		* * *
5/3/2006	11	Minute Entry for proceedings held before James Orenstein : Initial Conference Hearing held on 5/3/2006.

SCHEDULING: The next status conference will be held on June 14, 2006, at 2:00 p.m. THE FOLLOWING RULINGS WERE MADE: (1) The parties will submit simultaneous letters on May 12, 2006, regarding the authority for a stay of all discovery pending the resolution of anticipated motions for dismissal. The defendants' submission will also include objections or proposed alternative deadlines in the event discovery is not stayed. (2) The issue of the timing of the defendants' answers was not addressed at today's conference. The parties' counsel are directed to meet and confer and make either a joint proposal, or competing proposals for the deadline for each defendant to answer. In the absence of agreement, the parties should address whether there is any reason to extend any properly served defendant's deadline for answering past May 23, 2006. (3) I will enter a separate pretrial order governing other aspects of pretrial procedures as discussed at today's conference. (4) The law firm of Sidley Austin LLP, by attorney Joel M. Mitnick, was permitted to appear on behalf of the Ministry of Commerce of the People's Republic of China as *amicus curiae*

for purposes of today's conference. I thank Mr. Mitnick and his client for their participation and assistance, and look forward to their continued participation and assistance as the parties and the court grapple with the practical discovery and litigation challenges that may arise in this historic case. Accordingly, *amicus* is invited to appear through counsel at all future conferences before me in this litigation, and need not secure permission to do so in advance. To the extent *amicus* wishes to be heard with respect to the anticipated dispositive motions or other matters before Judge Trager, counsel must seek the court's permission. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00988-DGT-RML(Orenstein, James) (Entered: 05/03/2006)

5/4/2006	12	PRETRIAL ORDER 1: The attached order consolidates cases for pretrial purposes and provides instructions regarding attorney admissions and electronic filing. (SEE ATTACHED ORDER.) Signed by Judge James Orenstein on 05/04/06. Associated Cases: 1:06-md-01738-DGT-JO,1:05-

cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00988-DGT-RML(Adams-Ciardullo, Diana) (Entered: 05/04/2006)

* * *

6/7/2006 24 PRETRIAL ORDER 2 -- The attached Order sets forth dates for discovery deadlines and court appearances and appoints Co-Lead and Liaison Plaintiffs' Counsel. **SEE ATTACHED ORDER**. Signed by Judge James Orenstein on 06/07/06. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO(Adams-Ciardullo, Diana) (Entered: 06/07/2006)

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6/29/2006 30 MOTION for Leave to File Amicus Curiae Brief in Support of Defendants' Motion to Dismiss by Ministry of Commerce for the Peoples Republic of China. (Attachments: # 1 Exhibit A# 2 Exhibit B)Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO(Mitnick, Joel) (Entered: 06/29/2006)

6/29/2006	31	Letter to *Judge Trager, re: application to file Amicus Brief* by Ministry of Commerce for the Peoples Republic of China. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO(Mitnick, Joel) (Entered: 06/29/2006)
6/29/2006	32	CERTIFICATE OF SERVICE by Ministry of Commerce for the Peoples Republic of China re 30 MOTION for Leave to File *Amicus Curiae Brief in Support of Defendants' Motion to Dismiss* Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO(Mitnick, Joel) (Entered: 06/29/2006)
		* * *
6/30/2006	34	Letter *enclosing Notice of Motion to Dismiss and supporting papers (cover letter only, without enclosures pursuant to Judge Trager's Motion Practices)* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-

JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO(Goldstein, Richard) (Entered: 06/30/2006)

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7/6/2006	35	ORDER granting 30 Motion for Leave to File amicus brief. (Order endorsed on proposed order attached to motion.) Ordered by Judge David G. Trager on 7/6/2006. (Trager, David) (Entered: 07/06/2006)

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8/16/2006	45	REPLY in Opposition *Defendants' Motion to Dismiss or Strike Ranis's Claims for Damages* by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Affidavit of William Isaacson) Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Rutherford, Alanna) (Entered: 08/16/2006)
8/16/2006	46	MEMORANDUM in Opposition to Defendants' Motion to Dismiss by all plaintiffs. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4

Exhibit D# 5 Exhibit E# 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M) Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Rutherford, Alanna) (Entered: 08/16/2006)

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9/22/2006	66	Notice of MOTION to Dismiss *the Complaint with prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6)* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)
9/22/2006	67	MOTION to Dismiss *(Defendants' Memorandum in Support of Motion to Dismiss)* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-

JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)

9/22/2006 68 MOTION to Dismiss *(Declaration of Richard S. Goldstein in Support of Defendants' Motion to Dismiss)* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 (part 1 of 3) # 4 Exhibit 3 (part 2 of 3) # 5 Exhibit 3 (part 3 of 3) # 6 Exhibit 4 # 7 Exhibit 5 (part 1 of 6) # 8 Exhibit 5 (part 2 of 6) # 9 Exhibit 5 (part 3 of 6) # 10 Exhibit 5 (part 4 of 6) # 11 Exhibit 5 (part 5 of 6) # 12 Exhibit 5 (part 6 of 6) # 13 Exhibit 6 # 14 Exhibit 7 # 15 Exhibit 8)Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)

9/22/2006 69 MOTION to Dismiss *(Brief of Amicus Curiae the Ministry of Commerce of the People's Republic of China in Support of the Defendants' Motion to Dismiss the Complaint)* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-

453. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)

9/22/2006 70 MOTION to Dismiss *(Declaration of Joel M. Mitnick in Support of the Brief of Amicus Curiae the Ministry of Commerce of the People's Republic of China)* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K)Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)

9/22/2006 71 RESPONSE in Opposition re 67 MOTION to Dismiss *(Defendants' Memorandum in Support of Motion to Dismiss) (Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss)* filed by Defendant(s) in

Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I # 10 Exhibit J # 11 Exhibit K # 12 Exhibit L # 13 Exhibit M) Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)

9/22/2006 72 REPLY to Response to Motion re 67 MOTION to Dismiss *(Defendants' Memorandum in Support of Motion to Dismiss) (Defendants' Reply Memorandum in Support of Motion to Dismiss)* filed by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. Associated Cases: 1:06-md-01738-DGT-JO,1:05-cv-00453-DGT-JO,1:05-cv-06059-DGT-JO,1:06-cv-00149-DGT-JO, 1:06-cv-00987-DGT-JO,1:06-cv-00988-DGT-JO,1:06-cv-01721-DGT-JO,1:06-cv-03528-DGT(Goldstein, Richard) (Entered: 09/22/2006)

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1/31/2007 124 AMENDED COMPLAINT against all defendants, filed by all plaintiffs.

(Rutherford, Alanna) (Entered: 01/31/2007)

* * *

5/31/2007	144	Letter *to Honorable Judge David G. Trager* by Ministry of Commerce for the Peoples Republic of China (Attachments: # 1 Un signed Order) Associated Cases: 1:06-md-01738-DGT-JO et al. (Mitnick, Joel) (Entered: 05/31/2007)
6/1/2007	145	Letter *responding to Ministry of Commerce's letter motion to appear at oral argument* by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453 (Rutherford, Alanna) (Entered: 06/01/2007)

* * *

8/10/2007	170	Letter dated 8/10/2007 from Joel M. Mitnick, Counsel for Amicus The Ministry of Commerce of the People's Republic of China to judge David G. Trager. (Attachments: # 1 Certificate of Replacement Copies # 2 Certificate of Replacement Copies) (Marziliano, August) (Entered: 08/10/2007)
8/20/2007	171	AMENDED COMPLAINT and Motion to File the Amended Complaint against all defendants, filed by all plaintiffs. (Attachments: # 1 Affidavit # 2 Exhibit Amended Complaint) (Rutherford, Alanna) (Entered: 08/20/2007)

* * *

9/25/2007	176	ORDER granting 171 letter motion to file a Second Amended Complaint. The court is inclined to grant a reasonable extension of the schedule to accommodate the issues raised by defendants, but refers the issue of scheduling to Magistrate Judge James Orenstein. Ordered by Judge David G. Trager on 9/25/2007. (Martinez, Mira) (Entered: 09/25/2007)

* * *

9/27/2007	179	AMENDED COMPLAINT *Second Amended Class Action Complaint. Document number 177 was filed in error* against Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453, filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Rutherford, Alanna) (Entered: 09/27/2007)

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1/22/2008	236	Letter by Ministry of Commerce for the Peoples Republic of China (Mitnick, Joel) (Entered: 01/22/2008)

* * *

2/4/2008	241	Letter *to Magistrate Judge Orenstein* by Ministry of Commerce for the Peoples Republic of China Associated Cases: 1:06-md-01738-DGT-JO et al. (Mitnick, Joel) (Entered: 02/04/2008)

* * *

2/8/2008	242	MOTION to Certify Class *(Injunction Class)* by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Rutherford, Alanna) (Entered: 02/08/2008)
2/8/2008	243	MEMORANDUM in Support re 242 MOTION to Certify Class (Injunction Class) filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J) (Rutherford, Alanna) (Entered: 02/08/2008)
2/8/2008	244	REPLY in Support re 242 MOTION to Certify Class *(Injunction Class)* filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Rutherford, Alanna) (Entered: 02/08/2008)

* * *

2/8/2008	246	MOTION to Certify Class *(Damages Class)* by Plaintiff(s) in Civil Action Philion vs Hebei Welcome Pharmaceutical Co. Ltd. 06-CV-987. (Rutherford, Alanna) (Entered: 02/08/2008)
2/8/2008	247	MOTION to Certify Class *(Damages Class)* by Plaintiff(s) in Civil Action

Animal Science vs Hebei, 05-CV-453. (Rutherford, Alanna) (Entered: 02/08/2008)

2/8/2008 248 MEMORANDUM in Support re 247 MOTION to Certify Class *(Damages Class)* filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J) (Rutherford, Alanna) (Entered: 02/08/2008)

2/8/2008 249 MEMORANDUM in Support re 247 MOTION to Certify Class *(Damages Class)* Supplemental filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Rutherford, Alanna) (Entered: 02/08/2008)

* * *

6/9/2008 306 Letter *to Honorable. David G. Trager* by Ministry of Commerce for the Peoples Republic of China (Attachments: # 1 Attachment I, # 2 Attachment II) (Mitnick, Joel) (Entered: 06/09/2008)

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8/26/2008 319 Letter *from Joel M. Mitnick Counsel for* by Ministry of Commerce for the Peoples Republic of China (Mitnick, Joel) (Entered: 08/26/2008)

* * *

8/29/2008	322	Letter *from J. Mitnick* by Ministry of Commerce for the Peoples Republic of China (Mitnick, Joel) (Entered: 08/29/2008)

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9/29/2008	331	Letter by Ministry of Commerce for the Peoples Republic of China (Mitnick, Joel) (Entered: 09/29/2008)

* * *

11/06/2008	338	MEMORANDUM AND ORDER denying defendants' motion to dismiss the complaints under the act of state doctrine, foreign sovereign compulsion and international comity. Defendants' motions to dismiss the second amended complaint are granted. Plaintiffs have 30 days to replead the second amended complaint to make allegations against JSPC and Legend. Ordered by Senior Judge David G. Trager on 11/6/2008. (Trager, David) (Entered: 11/06/2008)

* * *

12/2/2008	355	AMENDED COMPLAINT *Third Amended Class Action Complaint* against all defendants, filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Letter to Judge Trager, # 2 Comparison of Second and Third Amended Complaints)

(Rutherford, Alanna) (Entered: 12/02/2008)

* * *

1/30/2009 364 *Defendant Hebei Welcome Pharmaceutical Co. Ltd.'s* ANSWER to 355 Amended Complaint, by Hebei Welcome Pharmaceutical Co. Ltd.. (Critchlow, Charles) (Entered: 01/30/2009)

* * *

3/27/2009 371 Fully Briefed MOTION to Dismiss for Lack of Jurisdiction *Cover Letter to Honorable Judge Trager Enclosing Motion Papers Filed Under Seal by Defendants North China Pharmaceutical Group Corp., North China Pharmaceutical Co., Ltd., and North China Pharmaceutical Group International Trade Co., Ltd. (f/k/a North China Pharmaceutical Group Import and Export Trade Co., Ltd.),* by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Prescott, Darrell) (Entered: 03/27/2009)

3/30/2009 372 MOTION to Dismiss by North China Pharmaceutical Group, et al. Memorandum in support of motion to dismiss. Plaintiff's opposition to motion to dismiss. Declaration

of support of plaintiff's opposition. Reply memo in support of North China Pharmaceutical. Declaration of Christopher Chin. Documents filed under seal and placed in vault. (Siegfried, Evan) (Entered: 03/30/2009)

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11/23/2009 391 MOTION for Summary Judgment by Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co., Ltd., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Goldstein, Richard) (Entered: 11/23/2009)

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11/23/2009 393 MEMORANDUM in Support re 391 MOTION for Summary Judgment *or, in the Alternative, for Determination of Foreign Law and Entry of Judgment Pursuant to Rule 44.1, Fed. R. Civ. P.* filed by Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co., Ltd., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Goldstein, Richard) (Entered: 11/23/2009)

11/23/2009 394 AFFIDAVIT/DECLARATION in Support re 391 MOTION for Summary

Judgment *or, in the Alternative, for Determination of Foreign Law and Entry of Judgment Pursuant to Rule 44.1, Fed. R. Civ. P.* filed by Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co., Ltd., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Attachments: # 1 Exhibits 1-5, # 2 Exhibits 6-12, # 3 Exhibits 13-22, # 4 Exhibits 23-39, # 5 Exhibits 40-44, # 6 Exhibits 45-48, # 7 Exhibit 49, # 8 Exhibits 50-52, # 9 Exhibits 53-59) (Goldstein, Richard) (Additional attachment(s) added on 11/30/2009: # 10 Exhibit 35) (Marziliano, August). (Entered: 11/23/2009)

11/23/2009 395 MEMORANDUM in Opposition re 391 MOTION for Summary Judgment *or, in the Alternative, for Determination of Foreign Law and Entry of Judgment Pursuant to Rule 44.1, Fed. R. Civ. P.* filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Goldstein, Richard) (Entered: 11/23/2009)

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11/23/2009 397 AFFIDAVIT/DECLARATION in Opposition re 391 MOTION for Summary Judgment *or, in the*

Alternative, for Determination of Foreign Law and Entry of Judgment Pursuant to Rule 44.1, Fed. R. Civ. P. filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibits C-G, # 4 Exhibit H, # 5 Exhibit I, # 6 Exhibits J-M, # 7 Exhibit N (Part 1 of 2), # 8 Exhibit N (Part 2 of 2), # 9 Exhibits O-R, # 10 Exhibits S-U, # 11 Exhibits V-X, # 12 Exhibits Y-CC, # 13 Exhibits DD-II, # 14 Exhibit JJ, # 15 Exhibits KK-MM, # 16 Exhibits NN-RR, # 17 Exhibits SS-VV, # 18 Exhibits WW-YY, # 19 Exhibit 21, # 20 Exhibits 37,38,40,42, # 21 Exhibits 43,47,49, # 22 Exhibits 50,51,52,53,54,56, # 23 Exhibits 57,58,59,61,64, # 24 Exhibits 65,72,74, # 25 Exhibits 76,79,81,83, # 26 Exhibits 85,86,87,88,92, # 27 Exhibits 111,119,135, # 28 Exhibits 136,137,138,139, # 29 Exhibits 141,142, # 30 Exhibits 144,149,150, # 31 Exhibits 154,159,160,162,164,176,233) (Goldstein, Richard) (Additional attachment(s) added on 11/30/2009: # 32 Exhibit B, # 33 Exhibit E, # 34 Exhibit F, # 35 Errata H) (Marziliano, August). (Additional attachment(s) added on 11/30/2009: # 36 Exhibit 56, # 37 Errata 59 61 and 64, # 38 Exhibit

65 and 74, # 39 76 79 81 and 83, # 40 Exhibit 85 86 and 88, # 41 Exhibit 11 119 and 135, # 42 136 137 138 and 139, # 43 Exhibit 141, # 44 Exhibit 149 and 150, # 45 Exhibit 176) (Marziliano, August). (Entered: 11/23/2009)

11/23/2009 398 REPLY in Support re 391 MOTION for Summary Judgment *or, in the Alternative, for Determination of Foreign Law and Entry of Judgment Pursuant to Rule 44.1, Fed. R. Civ. P.* filed by Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co., Ltd., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Goldstein, Richard) (Entered: 11/23/2009)

11/23/2009 399 AFFIDAVIT/DECLARATION in Support re 391 MOTION for Summary Judgment *or, in the Alternative, for Determination of Foreign Law and Entry of Judgment Pursuant to Rule 44.1, Fed. R. Civ. P.* filed by Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co., Ltd., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7

Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12) (Goldstein, Richard) (Entered: 11/23/2009)

11/23/2009 400 Letter *from Richard S. Goldstein to the Honorable David G. Trager* by Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co., Ltd., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd. (Attachments: # 1 Statement Of The Ministry Of Commerce of the PRC, dated 8/31/09) (Goldstein, Richard) (Entered: 11/23/2009)

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1/19/2010 416 REPLY in Opposition re 391 MOTION for Summary Judgment *(sur-reply permitted by D.E. 415)* filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Agrawal, Suyash) (Entered: 01/19/2010)

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2/5/2010 419 REPLY in Opposition re 391 MOTION for Summary Judgment */Defendants' Response To Plaintiffs' Sur-Reply Opposing Summary Judgment And Determination Of Foreign Law (Response to D.E. 416)* filed by Aland (Jiangsu) Nutraceutical Co.,

		Ltd. (Goldstein, Richard) (Entered: 02/05/2010)
		* * *
1/19/2011	423	JPMDL Order reassigning litigation to the Honorable Brian Cogan. Associated Cases: 1:06-md-01738-DGT-JO et al. (Marziliano, August) (Entered: 01/19/2011)
1/19/2011		Judge Brian M. Cogan added. Senior Judge David G. Trager no longer assigned to case. Associated Cases: 1:06-md-01738-DGT-JO et al. (Marziliano, August) (Entered: 01/19/2011)
		* * *
9/6/2011	440	ORDER denying 391 Motion for Summary Judgment. Ordered by Judge Brian M. Cogan on 9/1/2011. (Marziliano, August) (Entered: 09/06/2011)
		* * *
11/11/2011	445	MOTION for Leave to Appeal by Aland (Jiangsu) Nutraceutical Co., Ltd, Hebei Welcome Pharmaceutical Co. Ltd., JSPC America, Inc., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Attachments: # 1 Memorandum in Support Of Defendants' Motion For

Certification Of The Court's September 1, 2011 Order For Interlocutory Appeal Pursuant To 28 U.S.C. § 1292(b)) (Bomse, Stephen) (Entered: 11/11/2011)

* * *

11/30/2011 448 MEMORANDUM in Opposition re 445 MOTION for Leave to Appeal filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Affidavit of Service) (Landau, Brent) (Entered: 11/30/2011)

* * *

12/12/2011 450 REPLY in Support re 445 MOTION for Leave to Appeal filed by Aland (Jiangsu) Nutraceutical Co., Ltd, Hebei Welcome Pharmaceutical Co. Ltd., JSPC America, Inc., Northeast Pharmaceutical Group Co., Ltd., Shijiazhuang Pharma. Weisheng Pharmaceutical Co., Ltd.. (Bomse, Stephen) (Entered: 12/12/2011)

12/12/2011 451 Letter *Dated December 12, 2012 from Joel M. Mitnick to Judge Cogan* by Ministry of Commerce for the Peoples Republic of China (Mitnick, Joel) (Entered: 12/12/2011)

* * *

1/26/2012 453 **MEMORANDUM DECISION AND ORDER** denying 63 Motion to Dismiss; granting 242 Motion to Certify Class;

granting 247 Motion to Certify Class. Ordered by Judge Brian M. Cogan on 1/25/2012. (Siegfried, Evan) (Entered: 01/26/2012)

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2/9/2012 455 **MEMORANDUM DECISION AND ORDER** denying 445 Motion for Leave to Appeal. Ordered by Judge Brian M. Cogan on 2/8/2012. (Siegfried, Evan) (Entered: 02/09/2012)

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2/9/2012 457 Letter *to Magistrate Judge James Orenstein dated 2/9/2012* by Ministry of Commerce for the Peoples Republic of China (Mitnick, Joel) (Entered: 02/09/2012)

2/9/2012 458 DECLARATION re Order, *dated 02/06/2012* by Ministry of Commerce for the Peoples Republic of China (Attachments: # 1 Appendix A (Redacted in Full), # 2 Appendix B (Redacted in Full)) (Mitnick, Joel) (Entered: 02/09/2012)

* * *

3/30/2012 463 Letter *to Judge James Orenstein with Declaration of Joel M. Mitnick attached*, by Ministry of Commerce for the Peoples Republic of China (Attachments: # 1 Declaration Declaration of Joel M. Mitnick) (Mitnick, Joel) (Entered: 03/30/2012)

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8/8/2012	496	**MEMORANDUM DECISION AND ORDER**. The NCPC defendants' 371 motion to dismiss is granted in part and denied in part. Defendants North China Pharmaceutical Co. Limited and North China Pharmaceutical Group International Trade Co., Ltd. are dismissed from this case for lack of personal jurisdiction. The motion to dismiss is denied insofar as it seeks dismissal of defendant North China Pharmaceutical Group Corp. See attached order for further details. Ordered by Judge Brian M. Cogan on 8/7/2012. Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Siegfried, Evan) (Entered: 08/08/2012)

* * *

8/22/2012	505	ANSWER to 355 Amended Complaint, by North China Pharmaceutical Group Corp.. (Prescott, Darrell) (Entered: 08/22/2012)

* * *

11/12/2012	587	MOTION for Summary Judgment (Responses due by 12/3/2012) by North China Pharmaceutical Group Corp.. (Attachments: # 1 Memorandum in Support, # 2 Rule 56.1 Statement, # 3 Declaration of James D. Bailey, # 4

Exhibit A, # 5 Exhibit B, # 6 Exhibit C, # 7 Exhibit D, # 8 Exhibit E, # 9 Exhibit F, # 10 Exhibit G, # 11 Exhibit H, # 12 Exhibit I, # 13 Exhibit J, # 14 Exhibit K, # 15 Exhibit L, # 16 Exhibit M, # 17 Exhibit N, # 18 Exhibit O, # 19 Exhibit P) (Prescott, Darrell) (Entered: 11/12/2012)

* * *

12/3/2012 616 MEMORANDUM in Opposition re 587 MOTION for Summary Judgment filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Southwick, James) (Entered: 12/03/2012)

* * *

12/10/2012 621 REPLY in Support re 587 MOTION for Summary Judgment filed by North China Pharmaceutical Group Corp.. (Attachments: # 1 Exhibit A) (Prescott, Darrell) (Entered: 12/10/2012)

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2/8/2013 635 **MEMORANDUM DECISION AND ORDER** denying (587) Motion for Summary Judgment; granting in part and denying in part (595) Motion to Compel. See attached order for further details. Ordered by Judge Brian M. Cogan on 2/8/2013. Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Siegfried, Evan) (Entered: 02/08/2013)

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2/25/2013	658	Minute Entry for proceedings held before Judge Brian M. Cogan: Jury Selection held on 2/25/2013.(Court Reporter Charleane Heading) (Lee, Tiffeny) (Entered: 02/26/2013)
2/25/2013		Minute Entry for Jury Trial begun on 2/25/2013 before Judge Brian M. Cogan. All parties present. Opening statements. Jury Trial continued to 2/26/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Marsha Diamond.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) Modified. (Entered: 02/26/2013)
2/26/2013		Minute Entry for Jury Trial held on 2/26/2013 before Judge Brian M. Cogan. All parties present. Evidence entered; testimony heard. Jury Trial cont'd to 2/27/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Marsha Diamond.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 02/26/2013)
2/27/2013		Minute Entry for Jury Trial held on 2/27/2013 before Judge Brian M. Cogan. All parties present. Evidence entered; testimony heard. Jury Trial

	cont'd to 2/28/2013 at 9:30 AM in Courtroom 8D South.(Court Reporter Marsha Diamond.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 02/27/2013)
2/28/2013	Minute Entry for Jury Trial held on 2/28/2013 before Judge Brian M. Cogan. All parties present. Evidence entered; testimony heard. Jury Trial cont'd to 3/4/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Anthony Mancuso.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 02/28/2013)
	* * *
3/4/2013	Minute Entry for Jury Trial held on 3/4/2013 before Judge Brian M. Cogan. All parties present. Evidence entered; testimony heard. Jury Trial cont'd to 3/5/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Mary Agnes Drury.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/04/2013)
	* * *
3/5/2013	Minute Order for proceedings before Judge Brian M. Cogan: All parties

present. Motions for Reconsideration 125 and 614 are denied on the record. Jury Trial held on 3/5/2013. Evidence entered; testimony heard. Plaintiffs rests. Jury Trial cont'd to 3/6/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Mary Agnes Drury.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO(Clarke, Melonie) (Entered: 03/05/2013)

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3/6/2013 Minute Entry for Jury Trial held on 3/6/2013 before Judge Brian M. Cogan. All parties present. Evidence entered; testimony heard. Jury Trial cont'd to 3/7/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Mary Agnes Drury.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/06/2013)

* * *

3/7/2013 Minute Order for proceedings before Judge Brian M. Cogan: All parties present. Motion in Limine 666 is granted on the record. Jury Trial held on 3/7/2013. Evidence entered; testimony heard. Jury Trial cont'd to 3/11/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Mary

	Agnes Drury.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO(Clarke, Melonie) (Entered: 03/07/2013)
	* * *
3/11/2013	Minute Entry for Jury Trial held on 3/11/2013 before Judge Brian M. Cogan. All parties present. Evidence entered; testimony heard. Defendants'rests. Charging Conference set for 3/12/2013 at 10:30 AM in Courtroom 8D South. (Court Reporter Victoria Butler.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/11/2013)
	* * *
3/12/2013	Minute Order for proceedings held before Judge Brian M. Cogan. All parties present. Motion in Limine(674) granting in part on the record. Charging Conference held on 3/12/2013. Jury Trial cont'd to 3/13/2013 at 10:30 AM in Courtroom 8D South. (Court Reporter Victoria Butler.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO(Clarke, Melonie) (Entered: 03/12/2013)
3/13/2013	Minute Entry for Jury Trial held on 3/13/2013 before Judge Brian M. Cogan. All parties present.

		Closing arguments. Jury charged. Deliberations will resume 3/14/2013 at 9:30 AM in Courtroom 8D South. (Court Reporter Victoria Butler.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/13/2013)
		* * *
3/14/2013		Minute Entry for Jury Trial completed on 3/14/2013 before Judge Brian M. Cogan. All parties present. The jury deliberated and returned a verdict in favor of plaintiffs. The jurors were polled and excused. On motion of plaintiffs, the Court directed entry of judgment in favor of plaintiffs and against defendants in the amount of $162,300,000. (Court Reporter Victoria Butler.) Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/14/2013)
3/14/2013	675	JURY VERDICT Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/14/2013)
3/14/2013	676	JUDGMENT: The jury having rendered its verdict in this case in favor of plaintiff, the Ranis Company, Inc., as representative of the Direct Purchaser

Class, in the amount of $54,100,000.00, and the Court, upon motion of plaintiff, having directed entry of judgment upon trebling the damage award pursuant to 15 U.S.C.§ 15(a), less $9,000,000 received from former defendants, it is hereby ORDERED and ADJUDGED, that the Ranis Company, as class representative, take judgment against defendants, Hebei Welcome Pharmaceutical Co., Ltd. and North China Pharmaceutical Group Corp., jointly and severally, in the amount of $153,300,000. Ordered by Judge Brian M. Cogan on 3/14/2013. Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Clarke, Melonie) (Entered: 03/14/2013)

* * *

4/11/2013 688 MOTION for Judgment as a Matter of Law *to Reduce Damages by $7.5 Million (Before Trebling) Due to Speculation, Guess and Surmise as to Co-Conspirator Sales* by Hebei Welcome Pharmaceutical Co. Ltd.. Responses due by 4/25/2013 (Attachments: # 1 Memorandum in Support of Defendants' Renewed Motion for Judgment as as Matter of Law to Reduce Damages by $7.5 Million (Before Trebling) Due to

Speculation, Guess and Surmise as to Co-Conspirator Sales, # 2 Exhibit A, # 3 Exhibit B) (Stillman, Catherine) (Entered: 04/11/2013)

4/11/2013 689 MOTION for Judgment as a Matter of Law (Renewed) Under Fed. R. Civ. P. 50(b) by North China Pharmaceutical Group Corp.. Responses due by 4/25/2013 (Attachments: # 1 Memorandum in Support, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R, # 20 Exhibit S, # 21 Exhibit T, # 22 Exhibit U, # 23 Exhibit V, # 24 Exhibit W, # 25 Exhibit X, # 26 Exhibit Y, # 27 Exhibit Z, # 28 Exhibit AA, # 29 Exhibit BB, # 30 Exhibit CC, # 31 Exhibit DD, # 32 Exhibit EE, # 33 Exhibit FF, # 34 Exhibit GG, # 35 Exhibit HH, # 36 Exhibit II) (Stillman, Catherine) (Entered: 04/11/2013)

* * *

4/11/2013 691 MOTION for Judgment as a Matter of Law (Renewed) Based on Act of State, Foreign Sovereign Compulsion, and International Comity by Hebei

	Welcome Pharmaceutical Co. Ltd.. Responses due by 4/25/2013 (Attachments: # 1 Memorandum in Support, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Exhibit J, # 12 Exhibit K, # 13 Exhibit L, # 14 Exhibit M, # 15 Exhibit N, # 16 Exhibit O, # 17 Exhibit P, # 18 Exhibit Q, # 19 Exhibit R, # 20 Exhibit S, # 21 Exhibit T, # 22 Exhibit U, # 23 Exhibit V, # 24 Exhibit W, # 25 Exhibit X, # 26 Exhibit Y) (Stillman, Catherine) (Entered: 04/11/2013)
4/12/2013	ORDER in case 1:05-cv-00453-BMC-JO; terminating (689) Motion for Judgment as a Matter of Law; terminating (691) Motion for Judgment as a Matter of Law in case 1:06-md-01738-BMC-JO. Rule 50(b) provides that a party may file "a" renewed motion for judgment as a matter of law; it does not provide that a party may file three motions for judgment as a matter of law. It is unclear why defendants felt the need to file three motions instead of one motion with their different grounds for relief. The latter two motions are therefore terminated. The court will consider the grounds raised in those

motions as part of its determination of motion 688. Defendant is directed not to refile. Ordered by Judge Brian M. Cogan on 4/12/2013. Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Cogan, Brian) (Entered: 04/12/2013)

* * *

4/12/2013 693 Notice of MOTION for Permanent Injunction by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. Responses due by 4/29/2013 (Attachments: # 1 Memorandum in Support, # 2 Exhibit 1, # 3 Proposed Order) (Coolidge, Melinda) (Modified) (Entered: 04/12/2013)

* * *

5/10/2013 702 MEMORANDUM in Opposition re 688 MOTION for Judgment as a Matter of Law to Reduce Damages by $7.5 Million (Before Trebling) Due to Speculation, Guess and Surmise as to Co-Conspirator Sales filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 PX 21 to PX 165, # 5 PX 173 to PX 320, # 6 PX 386 to PX 386A, # 7 PX 425 part 1, # 8 PX 425 part 2, # 9 PX 425 part 3, # 10 PX 425A, # 11 PX 426 part 1,

12 PX 426 part 2, # 13 PX 426 part 3, # 14 PX 426A, # 15 PX 427, # 16 PX 427A to PX 442, # 17 DTX 28 to DTX 68, # 18 Video Exhibit 1 to Video Exhibit 6) (Milici, Jennifer) (Entered: 05/10/2013)

* * *

5/13/2013 705 MEMORANDUM in Opposition *to Injunction Class Plaintiffs' Motion for Permanent Injunction* filed by Hebei Welcome Pharmaceutical Co. Ltd.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Stillman, Catherine) (Entered: 05/13/2013)

* * *

5/31/2013 764 REPLY in Support of *Defendants' Renewed Motion for Judgment as a Matter of Law* filed by Hebei Welcome Pharmaceutical Co. Ltd.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D) (Stillman, Catherine) (Entered: 05/31/2013)

* * *

6/6/2013 766 REPLY in Support re 693 Notice of MOTION for Permanent Injunction filed by Plaintiff(s) in Civil Action Animal Science vs Hebei, 05-CV-453. (Attachments: # 1 Proposed

Order (Amended)) (Coolidge, Melinda) (Entered: 06/06/2013)

* * *

11/26/2013 800 **MEMORANDUM DECISION AND ORDER**. Defendants' renewed motion for judgment as a matter of law 688 is denied and the Injunction Class's motion for a permanent injunction 693 is granted. An Amended Judgment and Decree will issue by separate order. Ordered by Judge Brian M. Cogan on 11/25/2013. Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Siegfried, Evan) (Entered: 11/26/2013)

11/27/2013 801 AMENDED JUDGMENT AND FINAL DECREE: The Ranis Company, as class representative, will take damages of defendants Hebei Welcome Pharmaceutical Co., Ltd. and North China Pharmaceutical Group Corp. jointly and severally, in the amount of One Hundred Fifty Three Million Three Hundred Thousand Dollars ($153,300,000). Ordered by Judge Brian M. Cogan on 11/27/2013. Associated Cases: 1:06-md-01738-BMC-JO, 1:05-cv-00453-BMC-JO (Marziliano, August) Modified on 11/27/2013 (Marziliano, August). Modified on 11/27/2013 (Marziliano, August). (Entered: 11/27/2013)

* * *

12/23/2013	814	NOTICE OF APPEAL as to 801 Judgment, by Hebei Welcome Pharmaceutical Co. Ltd., North China Pharmaceutical Group Corp.. Filing fee $ 505, receipt number 0207-6632038. (Jacobson, Jonathan) (Entered: 12/23/2013)

* * *

1/6/2014	822	Subsequent/Amended NOTICE OF APPEAL as to 816 Clerk's Judgment,,, 801 Judgment, by Defendant(s) in Civil Action Animal Science vs Hebei, 05-CV-453, North China Pharmaceutical Group Corp. No fee for an Amended Notice of Appeal. Service done electronically. Associated cases: 06-md-1738-BMC-JO and 05-cv-453-BMC-JO (McGee, Mary Ann) (Entered: 01/06/2014)

* * *

2/12/2014	835	THIRD AMENDED JUDGMENT AND FINAL DECREE that The Ranis Company, as class representative, will take of defendants Hebei Welcome Pharmaceutical Co., Ltd. and North China Pharmaceutical Group Corp., jointly and severally, damages in the amount of One Hundred Forty Seven Million Eight Hundred Thirty One Thousand Four Hundred Seventy One

Dollars and 03/100 ($147,831,471.03) with post judgment interest thereon pursuant to 28 U.S.C.§ 1961 nunc pro tunc to March 14, 2013 Signed Douglas C. Palmer, Clerk of Court by Michele Gapinski, Chief Deputy Clerk on 2/12/2014. (Lee, Tiffeny) (Entered: 02/12/2014)

* * *

2/18/2014 837 Subsequent NOTICE OF APPEAL by Hebei Welcome Pharmaceutical Co. Ltd., North China Pharmaceutical Group Corp. SECOND *AMENDED NOTICE OF APPEAL as to 835 THIRD AMENDED JUDGMENT AND FINAL DECREE, 816 SECOND AMENDED JUDGMENT AND FINAL DECREE, and 801 AMENDED JUDGMENT AND FINAL DECREE.* (Jacobson, Jonathan) (Entered: 02/18/2014)

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.RELEVANT DOCKET ENTRIES FROM THE U.S. DISTRICT COURT EASTERN DISTRICT OF NEW YORK (BROOKLYN) CIVIL DOCKET FOR CASE #: 1:05-CV-00453-BMC-JO

Date Filed	#	Docket Text
1/26/2005	1	COMPLAINT against Shijiazhuang Pharmaceutical (USA) Inc., China Pharmaceutical Group, Ltd., Hebei Welcome Pharmaceutical Co. Ltd., Jiangsu Jiangshan Pharmaceutical Co. Ltd., Northeast Pharmaceutical Group Co. Ltd., Weisheng Pharmaceutical Co. Ltd. filing fee $ 150, receipt number 305013, filed by Animal Science Products, Inc., The Ranis Company, Inc.. (Attachments: # 1 Civil Cover Sheet)(Bowens, Priscilla) (Entered: 02/02/2005)
		* * *
2/15/2006	40	Letter dated February 14, 2006 from the MDL Panel, enclosing a copy of the Panels Transfer Order consolidating this MDL action in EDNY, and assigning it to Judge Trager. (Attachments: # 1 MDL Transfer Order)Associated Cases: 1:06-md-01738-DGT-RML,1:05-cv-00453-DGT-RML,1:05-cv-06059-DGT-RML,1:06-cv-00149-DGT-RML(Brown, Marc) (Entered: 02/22/2006)
		* * * *

SELECTED EXHIBITS FROM THE MOTION-TO-DISMISS RECORD BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

SELECTED EXHIBITS TO THE DECLARATION OF JOEL M. MITNICK IN SUPPORT OF THE BRIEF OF AMICUS CURIAE THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA, FILED SEPTEMBER 22, 2006

ARTICLES OF ASSOCIATION OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES & HEALTH PRODUCTS IMPORTERS & EXPORTERS, APPROVED MARCH 22, 2002

CHINA CHAMBER OF COMMERCE OF MEDICINES & HEALTH PRODUCTS IMPORTERS & EXPORTERS

Chapter I General Provisions

Article 1

The name of this entity is China Chamber of Commerce Medicines & Health Products Importers & Exporters (hereinafter referred to as the Chamber of Commerce). The abbreviation of the name shall be CCCMHPIE.

Article 2

The Chamber of Commerce is a national-wide and self-disciplined social entity voluntarily organized by various economic organizations registered in the territory of the People's Republic of China and engaging in the import and export of medicines and health products and other relevant activities, with objectives of the trade coordination and service. The Chamber of Commerce shall

be non-profitable and not involved in business activities irrelevant with its coordination operations and in conflict with interests of its members.

Article 3

The Chamber of Commerce shall abide by the Constitution, national laws, administrative regulations, national principles and policies on foreign trade, observe the social morals and carry out the principles of democracy, openness, fairness and justice. The objective of the Chamber of Commerce is to coordinate and guide the import and export of medicines and health products and other relevant activities, provide consultancy service to members and other organizations, maintain the order of foreign trade, defend fair competition, secure interests of the state and the trade, safeguard lawful rights and interests of member organizations, and to boost the sound development of the import and export of medicines and health products.

Article 4

With the approval of the competent authority under the State Council, the Chamber of Commerce Is registered according to the law and shall have the independent status of legal person.

Article 5

The emblem of the Chamber of Commerce is a capsule of patent medicine with the English abbreviation of China Chamber of Commerce of Medicines & Health Products Importers & Exporters printed in the middle and two arc arrowheads in the opposite directions at the top and the bottom, the color of which is green.

Article 6

The domicile of the Chamber of Commerce: No. 12, Pan Jia Yuan Nan Li, Chao Yang District, Beijing.

Chapter II Scope of Business

Article 7

The Chamber of Commerce shall:

(1) Guide and coordinate the foreign trade activities for its members, and provide consultancy service;

(2) Strengthen the relationship with the relevant departments of the government and promote the realization of the overall objectives of the government; represent the interest of the trade and its member enterprises, reflect opinions and requests of the member enterprises to the government, and render consultations and proposals to the government for policy-making;

(3) Reinforce the contact, interchange and cooperation with the same trade organizations of scientific research, manufacture and domestic circulation, accelerate the integration of research, manufacture and commercial trade, and jointly maintain the order of the import and export; coordinate the import and export prices, market and clients of medicines and health products in accordance with the authorization of the government or the collective demands and the agreements of the same trade;

(4) Propagandize national laws, regulations and policies on foreign trade, and the rules of the World Trade Organization, and assist the competent authority under the State Council to guide and supervise the lawful operations of its member enterprises;

(5) Establish and develop internet websites and business information databases, collect and study and exchange business information data, issue publications, carry out investigation and study on the market and situation of the import and export of medicines and health products international trade practices and conventions and trade-restraint measures of certain countries, and render information and consultation services to member enterprises;

(6) Organize enterprises concerned in the trade to respond to antidumping or countervailing lawsuits or claims against China's medicines and health products; carry out investigations on the dumping or other unfair competition activities of foreign medicines and health products within China's customs territory and report to the government thereof;

(7) Organize domestic and international symposiums and undertake home and oversea training on business operation;

(8) Organize imports and exports fairs and expos for medicines and health products; organize or coordinate the participation of enterprises of the trade in home and oversea fairs, exhibitions and expos; organize overseas study tours, market promotions, product procurements and technical exchanges; assist its members in product advertisements and international market promotions.

(9) Join international organizations of the same trade as the representative of China's domestic trade; attend relevant international professional conferences, and strength the contact, cooperation and exchange with foreign organizations of the same trade;

(10) Mediate the disputes between its member enterprises fairly, promote the self-disciple of this trade and the inter-discipline and self-disciple of enterprises, and safeguard the normal operation order the import and exports and the common interests of its member enterprises;

(11) Implement the authorizations of the competent authority under the State Council or fulfill other obligations endowed by the common demands of its member enterprises and agreements of the same trade.

Chapter III Member

Article 8

The member of the Chamber of Commerce shall be an entity principally.

Article 9

Entities with desire to be a member of the Chamber of Commerce shall satisfy the following requirements:

(1) Supporting of the Articles of Association of the Chamber of Commerce,

(2) The Expression of its desire to join the Chamber of Commerce,

(3) Established and registered in the territory of China according to law and involvement in trade of import and export of medicines and health products or other relevant activities.

Article 10

The procedures of joining the Chamber of Commerce shall be as follows:

(1) To submit a written application;

(2) To submit registration documents issued by relevant departments of the government;

(3) After passing the examination of qualification by the Chamber of Commerce and payment of the registration fee, the applicant shall be registered as a member and be awarded a membership certificate.

Article 11

Rights of members shall be as follows:

(1) To vote and to stand for election;

(2) To participate in activities organized by the Chamber of Commerce;

(3) To enjoy all kinds of services provided by the Chamber of Commerce with priority;

(4) To supervise the work of the Chamber of Commerce, and to put forward comments and suggestions thereof;

(5) To impeach, propose punishments and to defend itself when indicted;

(6) To voluntarily join and freely quit the Chamber of Commerce.

Article 12

Obligations of members shall be as follows:

(1) To abide by national laws and administratives regulations, and implement the national guiding principles and policies on foreign trade.

(2) To observe by the Articles of Association of the Chamber of Commerce, carry out its resolutions and stipulations, and fulfill tasks assigned by the Chamber of Commerce;

(3) Maintain interests of the statement and the trade, and not to infringe upon interests of other members;

(4) To pay membership dues in accordance with the Articles of Association;

(5) To report the statement of work affairs, relevant information and statistics data to the Chamber of Commerce.

Article 13

Should a member intend to quit the Chamber of Commerce, it shall submit a written application to the Chamber of Commerce and hand in its membership certificates.

Article 14

The Chamber of Commerce is entitled to suspend and/or abrogate the membership of a member in case that anyone of the following conditions is satisfied:

(1) Member dues have been in arrears for more than two years;

(2) Nonparticipation of activities organized by the Chamber of Commerce has been more than two years.

Article 15

Should a member violate the Articles of Association of the Chamber of Commerce or the coordination regulations and disregard the exhortation, the Chamber of Commerce

could circulation a notice of criticism, issue a warning or suspend the membership of this member in case of fairly serious violation in nature, the Chamber of Commerce could, with the approval of the board of directors or the standing board of directors, deprive this member of its membership.

Chapter IV Organization Structure, Election and Dismission of Person in Charge

Article 16

The supreme power of the Chamber of Commerce rest with the General Member (or Member Representative) Meeting. The General Member (or Member Representative) Meeting executes the following powers:

(1) To formulate and amend the Articles of Association of the Chamber of Commerce;

(2) To elect or dismiss members of the Board of Directors;

(3) To examine the work report and financial report of the Board of Directors;

(4) To examine the proposals from the Board of Directors, branches of the Chambers of Commerce and members;

(5) To terminate the Chamber of Commerce;

(6) To decided other important matters.

Article 17

Representatives to the General Member (or Member Representative) Meeting shall be selected democratically or decided by democratic consultation. The detailed

election rules shall be made by the board of directors in charge of the preparation for the General Member (or Member Representative) Meeting.

Article 18

The General member (or Member Representative) Meeting shall be convened with the presence of more than two thirds of members of the Chamber of Commerce, and resolutions shall come into force when half of votes presented at the General Member (or Member Representative) Meeting uphold them.

Article 19

The tenure of each General Member (or Member Representative) Meeting is three years. Special General Meeting (or Member representative) Meeting for reelection shall be convened in advanced or postponed in case of emergency or proposal by more than one third of members. The convene of the Special general Meeting (or member representative) Meeting shall comply with the prescription of Article [illegible] and be approved by the government agency responsible for social entity registration, but in no case the postponement of reelection can be more than one year.

Article 20

The executive body of the General Member (or Member Representative) Meeting is the board of directors. The board of directors shall be responsible for the routine operation of the Chamber of Commerce between sessions of the General Member (or Member Representative) Meeting.

The General Member (or Member Representative) Meeting shall elect the board of directors from candidates proposed by a member itself or by members jointly in accordance with the principle of democratic consultation. The measures to determine the candidate list shall be made by the board of directors in charge of the preparation for the General Member (or Member Representative) Meeting.

Article 21

The board of directors shall be responsible to the General Member (or Member Representative) Meeting and executive the following powers:

(1) To carry out the resolutions of the General Member (or Member Representative) Meeting;

(2) To elect and dismiss the president, vice president, secretary-general of the board of directors; to appoint the vice secretary-general;

(3) To prepare for the convene of the General Member (or Member Representative) Meeting;

(4) To determine the membership dues and the payment;

(5) To make the work report and the financial statements to the General Member (or Member Representative) Meeting;

(6) To examine and approve annual work plans;

(7) To examine and approve the annual financial budget and final accounts;

(8) To authorize affiliated working departments to recruit enterprises;

(9) To determine on other important matters.

Article 22

The board of directors shall be convened with the presence of more than two thirds of directors, and the affirmative votes of more than two thirds of present directors shall validate the resolutions of the board of directors.

Article 23

The meeting of the board of directors shall be held at least once a year and be chaired by the president of the Chamber of Commerce. Where considered to be necessary by the president or requested jointly by more than one third of directors, a special meeting of the board of directors may be held. Under certain particular circumstances, the meeting could be held by means of communications.

Article 24

A standing board of directors shall be set up and the number of standing directors shall not exceed one third of the number of directors in principle. The standing board of directors shall be elected by the board of directors and be responsible for it. The functions of the standing board of directors between sessions of the board of directors shall be as follows:

(1) To carry out resolutions of the General Member (or Member Representative) Meeting and the board of directors;

(2) To decide on the disciplinary actions against members concerned;

(3) To direct the routine operation of affiliated departments of the Chamber of Commerce;

(4) To determine on the establishment of branches, representative offices and affiliated entities and organization and staff members thereof;

(5) To determine on the establishment of departments under the standing working organizations and staff members thereof;

(6) To examine and approve criterions of this trade, agreements, regulations and management rules;

(7) To decide on other important matters.

Article 25

The meeting of the standing board of directors shall be convened with the Presence of more than two thirds of standing directors, and resolutions shall come into force with the approval of more than two thirds of present standing directors.

Article 26

The standing board of directors shall be convened semiannually and be chair by the president of the Chamber of Commerce. Where considered to be necessary by the president or requested jointly by more than one third of standing directors, a special meeting of the standing board of directors may be held. Under certain particular circumstances, the meeting could be held by means of communications.

Article 27

The Chamber of Commerce comprises of one president, several vice presidents (inclusive of part-time vice president when necessary) and one secretary-general (maybe concurrently held by full-time vice president).

Article 28

The candidates for the president, vice presidents and the secretary-general may be recommended by the competent authorities, or be recommended jointly by more than one third of members and approved by the competent authorities.

The candidates recommended by the competent authorities for the president, vice presidents and the secretary-general shall be taken as candidates for directors.

Article 29

The presidential management meeting shall be set up under the Chamber of Commerce. The president convenes and chairs this meeting and the member of it shall be the president, full-time vice-presidents and secretary-general. The presidential management meeting makes decisions on routine operation affairs according to the principles of democracy and centralization. The president, on behalf of the presidential management meeting, exercises the following powers:

(1) To convene and preside meetings of the board of directors and the standing board of directors;

(2) To inspect the implementation of resolutions made by the General Member (or Member Representative) Meeting, the board of directors and the standing board of directors;

(3) To sign important documents as the representative of the Chamber of Commerce;

(4) To recommend vice secretary-general candidates for the approval of the board of directors;

(5) To make proposals of the department establishment of standing working organizations and staff members thereof, and decide the employment of principal managers;

(6) To make proposals of the establishment and withdrawal of branches, representative offices, affiliated entities and personnel thereof, and decide on the employment of principal managers;

(7) To decide on the employment of full-time personnel in standing working organizations, branches, representative offices and affiliated entities;

(8) To take charge of the routine operation of working organizations and organize the fulfillment of annual work plans;

(9) To direct the operation of branches, representative offices and affiliated entities;

(10) To deal with other daily affairs.

Vice presidents and the secretary-general shall assist the president in the operation of the Chamber of Commerce.

Article 30

The president, vice presidents and the secretary-general shall satisfy the following requirements:

(1) Adhering to the routes, guidelines and policies of the Party, and possess sound political qualification;

(2) Having working experiences in the trade of the Chamber of Commerce;

(3) Complying with the age requirement stipulated by the state;

(4) Physically healthy for daily work;

(5) No record of criminal punishments in conjunction with the deprival of political rights;

(6) Having full civil right ability.

Article 31

The president, the vice-president or the secretary-general, whose age exceeds the limitation prescribed by the competent authorities, may assume office when firstly be approved by the board of directors, and then be rectified by the competent authorities and the government agency responsible for social entity registration.

Article 32

The president, the vice-president and the secretary-general may serve a term of three years and may continue to serve one more term provided being elected again, but no more than two consecutive terms. Where it is necessary for the prolong of the tenure, the continuation of that position shall firstly be approved by the General Member (or Member Representative) Meeting, and then be rectified by the competent authorities and the government agency responsible for special entity registration.

Article 33

The legal representative of the Chamber of Commerce shall be the president. Where it is necessary for one vice-president or the secretary-general to be the legal representative, it shall be approved by the competent authorities and the government agency responsible for social entity registration firstly.

The president, full-time vice presidents and the secretary-general of the Chamber of Commerce shall not take part-time positions in other entities, while the part-time vice president may maintain his position in his former entity.

Article 34

The Chamber of Commerce may employ an honorary president and certain number of advisors when necessary.

Chapter V Working Bodies and Branches

Article 35

Where it is necessary for the work, departments subordinate to the working bodies may be set up to deal with routine operation of the Chamber of Commerce with the approval of the board of directors or the standing board of directors. The establishment of standing working bodies shall comply with the stipulations of the state.

Article 36

Where it is necessary for the business development, the Chamber of Commerce may establish its branches in charge of various kinds of products imported and exported (hereinafter referred to as Branches), and may also set up representative offices in the main producing areas of the export products, principal ports and central foreign markets. The establishment of Branches and representative offices shall be determined by the board of directors or the standing board of directors firstly, and then approved by the government department directing regulating the trade of the Chamber of Commerce and the government agency responsible for social entity registration.

Article 37

Branches shall consist of the member enterprises operating the same kind of products, and for one kind of products only one branch can be established.

Article 38

Branches and representative offices of the Chamber of Commerce shall not set up branches.

Article 39

Branches and representative offices of the Chamber of Commerce, with individual legal person status, are integral parts of and regulated by the Chamber of Commerce. Under the guidance and supervision of the Chamber of Commerce, branches and representative offices shall carry out functions within authorization in accordance with the Articles of Association the Chamber of Commerce.

Article 40

Branches shall convene meeting of their members regularly and irregularly when necessary. The functions of the meeting are as follows:

(1) To elect or remove the members of the board of directors of Branches;

(2) To enact or amend management rules and work plans of the branches, and examine the work reports of the board of directors of the branches;

(3) To enact or amend the specific coordinating stipulations of importing and exporting products;

(4) To formulate or adjust the pricing plans of importing and exporting products;

(5) To examine and approve the proposals of the board of directors of branches;

(6) To examine whether the coordinating stipulations of importing and exporting products and the price coordinating plans are well carried out, and to make suggestions on solutions of problems arising in the coordinating work and punishment against wrongdoing member enterprises.

Article 41

The board of directors of Branches shall be responsible to the meeting of branch member, and exercise functions of the meeting of branch members when it is not in session. In accordance with the regulations of the Chamber of Commerce, resolutions of the meeting of branch members and work plans, the board of directors of branches shall carry out routine operation of work and be responsible for reporting the state of work affairs to the Chamber of Commerce and submit opinions on the disposal of specific matters.

Article 42

The board of directors of branches shall be elected by the meeting of branch members and consist of the president, the vice president, the secretary-general , the vice secretary-general and a certain number of directors of that branch.

Article 43

General a branch shall not maintain a standing administrative body. The routine work of a branch shall be taken over the Chamber of Commerce when the board of directors of the branch is not in session. While with

the approval of the standing board of directors of the Chamber of Commerce, a branch may set up a standing administrative body for special need.

Article 44

No branch membership dues shall be paid. The funds of branches shall be appropriated and managed by the Chamber of Commerce.

Article 45

Upon the request of members, each province, municipality and autonomous region may set up liaison institutions in order to promote the contact of members, and such institutions shall be responsible for the liaison work and information exchange between members within its own region, and when necessary, undertake a certain special assignments with the authorization of the Chamber of Commerce.

Chapter VI Management of Finance

Article 46

Sources of funds of the Chamber of Commerce are the following:

(1) Membership dues;

(2) Donations;

(3) Government financial aid;

(4) Income from approved business operations and service;

(5) Interests;

(6) Other lawful incomes.

Article 47

The Chamber of Commerce demands membership dues pursuant to the regulations of the state.

Article 48

Membership dues payable to the Chamber of Commerce shall be spent on the development of business with the business scope prescribed by the Articles of Association, and shall not be distributed among members.

Article 49

The Chamber of Commerce adopts restrict financial system on budget and find accounting. All revenue and expenditure shall be included in the budget and accounted uniformly. The budget and final accounting of finance shall be carried out annually and approved by the board of directors. Especially the budget for government appropriate funds or government financial aid and entrusted projects shall be implemented with the approval of the government authorities concerned.

Article 50

The budget and final accounting of finance shall be formulated and carried out in accordance with the principles of "the balance of revenue and expenditures and the elimination of budget deficit."

Article 51

The annual budget and final accounting of finance shall include the following:

(1) Revenue to be budgeted and accounted according to the sources thereof;

(2) Expenditures to be budgeted and accounted according to items prescribed for institution expenditures including operating expenses, public affairs expenses, expense for special projects, expense for fixed assets, personnel expense, etc.

Article 52

The board of directors may authorize directors of the Chamber of Commerce to inspect the fulfillment of the budget and final accounts of finance regularly or irregularly.

Article 53

Referring to The Financial Accounting System for institutions during the financial operation, the Chamber of Commerce shall constitute perfect systems of internal controlling and division of functions and responsibilities, and establish restrict financial management system so as to secure the legality, authenticity, accuracy and integrality of account data.

Article 54

The Chamber of Commerce shall be proved with accountant staff with professional qualification. The accountant staff cannot act as cashers concurrently. Provided that an accountant is transferred to other positions or resign, the procedure of delivery to the successor must be finalized heretofore.

Article 55

The asset management of the Chamber of Commerce shall abide by the rules as of finance management stipulated by the state, and be subject to the supervision of the General Member (or Member Representative) Meeting and the financial authorities of the government. Provided that the

assets are from government-appropriated funds, social donations or financial aids, the asset management shall be subject to the supervision of the auditing authorities of the government.

Article 56

Before the reelection of the Chamber of Commerce or the change of legal representative, financial audit shall be carried out in accordance with stipulations of the competent authorities and the government agency responsible for social entity registration.

Article 57

No asset of the Chamber of Commerce shall be usurped on, distributed or embezzled by any entity or individual.

Article 58

The salary, welfare and social security of full-time staff of the Chamber of Commerce may refer to the state stipulations on institution entity.

Article VII The Amendment Procedure of the Articles of Association

Article 59

The amendment to the Articles of Association shall be submitted to the General Member (or Member Representative) Meeting for examination after the approval of the board of directors.

Article 60

The amended Articles of Association shall come into force after is it submitted within 15 (fifteen) days since the approval day of the General Member (or Member Representative) Meeting and is ratified by the competent

authorities and the government agency responsible for social entity registration.

Article VIII Termination and Asset Disposal

Article 61

Under circumstances such as the fulfillment of objectives, voluntary termination, merger or separation of the Chamber of Commerce, the board of directors may propose motions to terminate the Chamber of Commerce.

Article 62

The motion of termination shall be approved the General Member (or Member Representative) Meeting and submitted to the competent authorities for ratification.

Article 63

Before termination, a liquidation group shall be set up, under the guidance of the competent authority and other competent institutions, to liquidate credits and debts, and deal with problems concerned with termination. No activities other than liquidation shall be carried out during the period of liquidation.

Article 64

The Chamber of Commerce shall be terminated after the registration at the government agency in charge of social entity registration is cancelled.

Article 65

Under the supervision of the competent authority and the government agency in charge of social entity registration, the surplus assets after termination shall be employed to development undertakings concerned with objectives

of the Chamber of Commerce in accordance with the stipulations of the state.

Chapter IX Miscellaneous Provisions

Article 66

The articles of Association have been approved at the meeting of the general member meeting on March 22, 2002.

Article 67

The board of directors is entitled to interpret the Articles of Association.

Article 68

The Article of Association shall come into force as of the date of the rectification by the government agency responsible for social entity registration.

CHINA CHAMBER OF COMMERCE OF MEDICINES HEALTH PRODUCTS IMPORTERS & EXPORTERS

MAJOY EXPORT COMMODITIES TO BE COORDINATED

Chinese Traditional Medicinal Materials (including those from the South)

1. Herbs
2. Animal Products
3. Minerals

Chinese Patent Medicines

Medicated wines

Health care drugs

Pharmaceuticals

1. Antibiotics
2. Sulfonamides
3. Antituberculotics
4. Antiparasitics
5. Antineoplastics
6. Cardio vascular drugs and diuretics
7. Steroids
8. Vitamins
9. Antipyretics and analgesics

10. Sedatives & Tranquilizers
11. Respiratory agents
12. Gastrointestinal agents
13. Poultry and Livestock drugs and feed additives
14. Biochemical pharmaceuticals/biologicals
15. Amino acids
16. Drugs for farming and animal husbandry
17. Isotopic drugs
18. Miscellaneous

Western Patent Medicines

Pharmaceutical media

Chemical reagents

Medical instruments and equipments

Medical rubber products

Medical dressings

Technology and services (in relation to the above mentioned commodities)

APPROVAL OF THE MINISTRY OF FOREIGN TRADE & ECONOMIC COOPERATION FOR ESTABLISHING THE VITAMIN C SUBCOMMITTEE OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES & HEALTH PRODUCTS IMPORTERS & EXPORTERS, DATED MARCH 23, 1998

Document of Personnel, Education and Labor Department of Ministry of Foreign Trade & Economic Cooperation

[1998] MOFTEC Ren Lao Zi No. 175

Approval for Establishing VC Sub-Committee of China Chamber of Commerce of Medicines & Health Products Importers & Exporters

China Chamber of Commerce of Medicines & Health Products Importers & Exporters ("the Chamber"):

We hereby acknowledge the receipt of the document entitled Request for Establishing the Vitamin C Sub-Committee within the Chamber with reference number of [1998] Yi Shang Zi No. 20. We hereby give a reply as follows:

1. Request for Establishing the Vitamin C Sub-Committee within the Chamber is approved. The major responsibilities of VC Sub-Committee are: to be responsible for coordinating the Vitamin C export market, price and customers of China, to improve the competitiveness of Chinese Vitamin C produce in the world market and promote the healthy developme[illegible] Vitamin C export of China.

2. The Vitamin C Sub-Committee is formed as a branch of the Chamber by the member enterprises of the Chamber that are engaged in Vitamin C export. It does not have a legal person status and is under the Chamber's leadership and administration. The Vitamin C Sub-Committee will not separately develop members or charge additional membership fees. The Chamber shall assist the Vitamin C Sub-Committee in staffing its personnel from the current state of the Chamber.

3. Please proceed with the relevant procedure at the Ministry of Civil Affairs and carry out work in accordance with laws.

We hereby make this reply.

March 23, 1998

1997 CHARTER OF THE VITAMIN C SUBCOMMITTEE OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES & HEALTH PRODUCTS IMPORTERS & EXPORTERS, DATED OCTOBER 11, 1997

Charter of Vitamin C Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers and Exporters

(passed upon discussions on the founding conference of Vitamin C Coordination Group on October 11, 1997)

Chapter I General Terms

Article 1 This Charter is constituted in accordance with provisions in *Foreign Trade Law of People's Republic of China, Provisional Regulations on Chamber of Commerce of Importers and Exporters of People's Republic of China, Charter of China Chamber of Commerce of Medicines and Health Products Importers and Exporters* and *Notice Relating to Strengthening the Administration of Vitamin C Production and Export.*

Article 2 Vitamin C Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers and Exporters (the "Sub-Committee") is an industrial organization organized, upon approval by the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") and under leadership of the Chamber, by those member enterprises of China Chamber of Commerce of Medicines and Health Products Importers and Exporters (the "Chamber") who have Vitamin C import and export operation rights and have certain extent of operational scale and ability.

Article 3 The Sub-Committee has the following tenets: complying with laws of the country; implementing and executing the state policies and regulations on foreign trade; maintaining orderly export of Vitamin C products; exploring international market; and serving for an ordered and highly efficient development of Vitamin C foreign trade on the basis of unified coordination.

Article 4 The Sub-Committee is located in Beijing.

Chapter II Functions

Article 5 The Sub-Committee performs ordination, direction, consultation, service and supervision & inspection functions over its members. It bridges and ties the enterprises and the government. The Sub-Committee has certain industrial function. It shall, representing the basic interests and demands of the members, inform certain issues to the relevant government department and to cause such issues to be promptly solved.

Article 6 In accordance with Vitamin C exports and changes on international markets, the Sub-Committee will make proposals on the export development plan and annual export quota allocation, supervise the implementation of export license by member enterprises and advises on allocation and adjustment of expert quota, and issuance of export license.

Article 7 The Sub-Committee shall coordinate and administrate market, price, customer and operation order of Vitamin C export, represent or organize the members to communicate in unison with foreign parties in accordance with international trade principles to protect the rights

and interests of the country and the members.

Article 8 The Sub-Committee shall actively develop connections with domestic and foreign industries, exchange information, broadly build and develop business partnership and represent the industry to participate in relevant international conferences.

Article 9 The Sub-Committee shall collect and organize Vitamin C information and materials with respect to domestic and international market, customers, productions and sales, and provide consulting service to the members.

Article 10 The Sub-Committee shall hold, periodically or otherwise, working meetings for Vitamin C export to exchange information, summarize and communicate experience, analyze and work out coordinated prices for Vitamin C export, to supervise and inspect the implementation of such coordinated export prices sest by the Sub-Committee and relevant business activities related to the enterprises.

Chapter III Members

Article 11 Any member of China Chamber of Commerce of Medicines and Health Products Importers and Exporters whose Vitamin C export volume in any year from 1994 to 1996 is above 200 tons can apply to join the Sub-Committee.

Article 12 Only the members of the Sub-Committee have the right to export Vitamin C and are simultaneously qualified to have Vitamin C export quota.

Article 13 Any member who wants to withdraw from the Sub-Committee, shall submit a 3-month prior written

application and such withdrawal shall be subject to approval by the Sub-Committee's Council.

Article 14 Member's rights

(1) To elect, to be elected and to vote;

(2) To supervise and give suggestions and comments on the Sub-Committee's work;

(3) To participate in activities organised by the Sub-Committee, enjoy various services including information and consultation provided by the Sub-Committee;

(4) To report and suggest punishment measures on any conduct violating laws and the Charter of the Sub-Committee, harmful to the state and industrial interests, and infringing legitimate rights and interests of the members.

Article 15 Member's obligations

(1) To comply with various directives, policies and regulations with respect to foreign trade, comply with the Charter and regulations of Vitamin C Sub-Committee and implement Sub-Committee's resolution;

(2) To foreign trade enterprises can purchase Vitamin C from or act as Vitamin C export agents only from

those manufacturing enterprises verified by the Sub-Committee. A manufacturing enterprise can only export its own products and can supply its products only to those foreign trade enterprises verified by the Sub-Committee.

(3) The members shall voluntarily adjust their production outputs according to changes of supplies and demands on international market;

(4) Manufacturing enterprise members and foreign trade enterprise members shall establish the cooperation relationship, understand and yield to each other and jointly share benefits and risks;

(5) To report Vitamin C exports of previous two months to the Sub-Committee every odd month;

(6) Strictly execute export coordinated price set by the Chamber and keep it confidential.

Article 16 Any violation of the Charter of the Sub-Committee, failure to implement any resolution or regulation of the Sub-Committee and failure to perform any member's obligation shall be punished by the Sub-Committee by means of, according to gravity of circumstances, warning, open criticism and even

revocation of its membership. The Sub-Committee will suggest to the competent governmental department, through the Chamber, to suspend and even cancel the vitamin export right of such violating member.

Chapter IV Organisation

Article 17 The Members Meeting is the highest authority of the Sub-Committee. The Members Meeting will be held once a year and shall only be duly convened when attended by representatives from two thirds of the members. The Members Meeting may be held earlier or later when necessary. The Sub-Committee has a Council. A Council Meeting will be held once every half year and may be earlier or later when necessary. The Council Meeting shall not be duly convened unless it is attended by two thirds of the Council's Directors.

Article 18 Functions of Members Meeting are:

(1) to approve and amend the Charter of the Sub-Committee;

(2) to review applications to join or withdraw from the Sub-Committee;

(3) to elect, appoint and dismiss members of the Council of the Sub-Committee;

(4) to review and pass work report of the Council and determine work plans of the Sub-Committee;

(5) to discuss and set export coordinated price;

(6) to inspect Vitamin C export coordination and administration and the implementation of export coordinated prices, and to suggest on punishment measures on violating member;

(7) to review and discuss proposals of the Council and the members.

Article 19 Functions of the Council

(1) Implementing and executing resolution of the Member Meeting and reporting to the Member Meeting;

(2) Stipulating specific regulations and measures of products operation and organising implementation;

(3) Proposing principle of annual export quota allocation;

(4) Calling for regular or temporary Members Meeting;

(5) Electing Chief Director and appointing General Secretary of the Council;

(6) Discussing and determining coordinated prices and other relevant issues under urgent circumstances.

Article 20 The Council of the Sub-Committee has one Chief Director, seven to nine Directors and one General Secretary. Members of the Council will be composed with the members of the Chamber and the members

of the Sub-Committee. Chief Director, Director and General Secretary will be elected upon nomination by the Chamber.

Article 21 Chief Director, Director and General Secretary have a term of three years, which can be renewed upon re-election. The Sub-Committee does not have any permanent body. General Secretary will be responsible for daily work when the Council is not in session.

Chapter V Funding Sources

Article 22 The Chamber will bear daily expenses of the Sub-Committee, but expenses on meetings and researches shall be collected and expensed by the Sub-Committee itself.

Chapter VI Miscellaneous

Article 23 This Charter will be passed by the Members Meeting and will become effective upon verification and approval by China Chamber of Commerce of Medicines and Health Products Importers and Exporters. The Members Meeting has the right to amend this Charter and the Council has the right to construe this Charter. Any amendment and supplementation to this Charter shall be verified and approved by China Chamber of Commerce of Medicines and Health Products Importers and Exporters.

1997 NOTICE RELATING TO STRENGTHENING THE ADMINISTRATION OF VITAMIN C PRODUCTION AND EXPORT BY THE MINISTRY OF FOREIGN TRADE & ECONOMIC COOPERATION AND STATE DRUG ADMINISTRATION, EFFECTIVE JANUARY 1, 1998

*Note: This Notice has been abolished by *List of 26 Abolished Ministerial Regulations of the Fourth Batch by Ministry of Foreign Trade and Economic Cooperation* (promulgation date: March 21, 2002, effective date: March 21, 2002).

1997 MOFTEC & SDA NOTICE

Notice Relating to Strengthening the Administration of Vitamin C Production and Export by Ministry of Foreign Trade and Economic Cooperation and State Drug Administration

((1997) MOFTEC Guan Fa No. 664)

(Issued on November 27, 1997,
effective from January 1, 1998)

The Foreign Trade & Economic Cooperation Commissions (Departments and Bureaus) of each province, autonomous region and municipality, State Drug Administration (the "SDA") and relevant departments of drug administration, all Companies directly under the MOFTEC and loucal counterpart of MOFTEC, all representative offices of MOFTEC, China Chamber of Commerce of Medicines & Health Products Importers & Exporters (the "Chamber"):

China is one of the biggest countries manufacturing and exporting Vitamin C. At present, Vitamin C export encounters intense competitions and challenges from the international market. In order to rectify the operational order and optimize the operational team of Vitamin C export, realize the scale-operation on export, improve the competitiveness of our Vitamin C products in the international market, promote the healthy development of Vitamin C export and maintain the interest of our country and enterprises, we hereby set forth the following:

1. The scale of Vitamin C production shall be strictly controlled.

(1) The establishment of Vitamin C manufacturing enterprises (including foreign investment enterprises) shall be strictly controlled, and the existing enterprises shall not expand production capacity any more.

(2) The production licensing system shall apply to those Vitamin C manufacturing enterprises that already started production (not including foreign investment enterprises). The SDA shall issue the production licenses to the Vitamin C manufacturing enterprises, and be responsible for publicizing information of annual production guidance.

(3) For the enterprises that has been in continuous production in recent years and achieved certain scales, the production license can be issued to them.

(4) Only the products manufactured by the enterprises that are verified by the SDA and obtained the production license can be supplied for export.

SDA shall formulate specific regulations to implement the above principles and circulate such regulations to the enterprises after seeking comments from MOFTEC.

2. MOFTEC shall consult with SDA and relevant departments when determining the total volume of Vitamin C export and the principles for quota allotment.

3. The enterprises qualified to operate Vitamin C export are: the export enterprises whose annual export volume reached 200 tons in any one of the continuous years from 1994 to 1996, which include foreign trading companies, manufacturing enterprises with the right to export their own products, and foreign investment companies (excluding those starting production in 1997). One of the attachments hereof is a list of the authorized enterprises (Please refer to Annex 1).

4. The method for allocating export quota shall be improved, Vitamin C export operation team shall be optimized in order to achieve scale-operation on export.

Every local counterpart of MOFTEC shall distribute the export quota set by MOFTEC to the enterprises qualified to operate Vitamin C export in strict accordance with the provisions hereof. It is imperative to follow the principle of fostering the excellent and scrapping the obsolete, distribute the quotas in preference to the enterprises with proper operational capabilities and outstanding profitability.

5. The Chamber shall improve the coordination on Vitamin C export, and shall monitor, supervise and examine how this notice is implemented by Vitamin C export

enterprises, and timely report to MOFTEC about the relevant issues and problems.

6. The Chamber shall establish a Vitamin C Coordination Group (which was the temporary name of the Vitamin C Sub-committee before the Vitamin C Sub-committee is officially approved). The main responsibilities of this Group are to coordinate with respect to Vitamin C export market, price and customers, and to organize the enterprises in contacting foreign entities. All enterprise qualified to operate Vitamin C export shall participate in such Coordination Group and subject themselves to the coordination of the Group. The specific method for coordination shall be formulated by the Chamber, and filed to MOFTEC for record.

7. Vitamin C Export Coordination Group shall timely organize meetings for the major Vitamin C export enterprises according to the domestic and international market development, to conduct studies on marketing strategies, timely formulate and adjust export coordination price, which the Vitamin C export enterprises must strictly implement in accordance with. With respect to the enterprises competing at low price and reducing price through any disguised means, a penalty shall be imposed in strict accordance with Article 10 of this Notice.

8. The organisations that authorized by MOFTEC to issue export licenses shall strictly verify the qualification of Vitamin C export and operation of the enterprises, and verify their export contracts and issue export license according to the Vitamin C coordinated price and volume quotas.

9. Vitamin C export enterprises shall report the export situations to the Chamber at regular intervals (for detailed information, please refer to Annex 2). With respect to the export enterprises that make report beyond time or disguise report, a penalty shall be imposed as applicable.

10. With respect to the export enterprises with violations of relevant provisions hereof, if substantiated, penalties shall be imposed, specifically, the Vitamin C export quota may be reduced, in the worst case their Vitamin C export shall be revoked.

11. Relevant provisions of this Notice shall enter into force as of the date of January 1, 1998.

Ministry of Foreign Trade & Economic Cooperation of People's Republic of China

State Drug Administration

November 27, 1997

Annex 1

Vitamin C Export and Operation Enterprises List[1]

(Enterprises whose annual Vitamin C export volume reached 200 tons in any year from 1994 to 1996)

1. North East General Pharmaceutical Import & Export Co. Ltd.

2. Yingkou Sanyou Medical Chemical Co. Ltd.

3. JiLin Songyuan Food Industry Co. Ltd.

4. HeBei Provincial Medicines & Health Products Import & Export Co. Ltd.

5. HeBei Welcome Pharmaceutical Co. Ltd.

6. Shijiazhuang WeiSheng Pharmaceuticals Co. Ltd.

7. Shijiazhuang Pharmaceutical Group

8. JiangSu Jiang'an Pharmaceutical Co. Ltd.

9. JiangSu Jiangshan Pharmaceutical Co. Ltd.

10. JiangSu High Hope International Group Medicines & Health Products Import & Export Co. Ltd.

11. Shanghai Sunve Pharmaceutical Co. Ltd.

12. Shanghai Municipal Medicines & Health Products Import & Export Co. Ltd.

13. ShangDong Provincial Medicines & Health Products Import & Export Co. Ltd.

14. Jiangsu Kunshan Municipal Foreign Trade Co. Ltd.

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1. Enterprises listed in 1, 4, 5, 6, 7 and 9 are the defendants in the current litigation.

15. HuNan Provincial Medicines & Health Products Import & Export Co. Ltd.

16. AnHui Provincial Medicines & Health Products Import & Export Co. Ltd.

17. AnHui Provincial Chemicals Import & Export Co. Ltd.

18. JiangXi Provincial Medicines & Health Products Import & Export Co. Ltd.

19. Sinochem Ningbo Import & Export Co. Ltd.

20. China National Pharmaceutical Foreign Trade Co. Ltd

21. China National Medicines & Health Products Import & Export Co. Ltd.

22. China Export Bases Development Liaoning Co. Ltd.* (awaiting verification)

23. China North Industries Guangzhou Co. Ltd* (awaiting verification)

24. HaiNan Nanguang Import & Export Co. Ltd.* (awaiting verification)

25. HeBei Xinwei Pharmaceutical Co. Ltd.* (awaiting verification)

26. Mudanjiang Donghua Pharmaceutical Co. Ltd.* (awaiting verification)

27. AnHui Sitong Bio-Pharm Co. Ltd.* (awaiting verification)

28. Ningbo Jierfu Pharmaceutical Co. Ltd.* (awaiting verification)

29. Jinan Pharmaceutical Factory* (awaiting verification)

30. JiangXi Ganjiang Pharmaceutical Co. Ltd.* (awaiting verification)

Annex 2

Table of Vitamin C Export Status

Name of the Company:

Customs Reference No.:

Month __ Year __

Contract No.	Quantity	Amount	Unit Price	Price Terms	Manufacturer

Port of Destination	Export Country (Region)	Importer				Port of Entry	Time of Entry
		Name	Tel	Fax	Address		

Signed by: Tel:

Seal of Company: Seal of MOFTEC:

Note: This form shall be filled with the situations of the last two months and delivered to the Western Medicines Department of the Chamber before the 10th of every odd month.

2002 NOTICE ISSUED BY THE MINISTRY OF FOREIGN TRADE AND ECONOMIC COOPERATION AND THE GENERAL ADMINISTRATION OF CUSTOMS FOR THE ADJUSTMENT OF THE CATALOGUE OF EXPORT PRODUCTS SUBJECT TO PRICE REVIEW BY THE CUSTOMS, PROMULGATED MARCH 29, 2002 AND EFFECTIVE MAY 1, 2005

2002 MOFTEC & Customs Notice

Notice Issued by the Ministry of Foreign Trade and Economic Cooperation of the General Administration of Customs for the Adjustment of the Catalogue of Export Products Subject to Price Review by the Customs

MOFTEC MAO FA [2002] No. 187

Promulgation Date: March 29, 2002

Effective Date: May 1, 2005

Issued by: the Ministry of Foreign Trade and Economic Cooperation (hereinafter "MOFTEC") and the General Administration of Customs (hereinafter "GAC") [tr.]

To: Guangdong Branch, Tianjin and Shanghai Commissioners' Offices of GAC, Directly Subordinated Customs Offices, the Commissions (Offices/Bureaus) of Trade and Economic Cooperation of Every Province, Autonomous Region, Municipality and City Specifically Designated in the State Plan, the Commissioners' Offices of MOFTEC at Various Cities, and the Chambers of Import and Export

MOFTEC and GAC have made the decision to adjust the catalogue of export products subject to price review by the customs for year 2002, in order to accommodate the new situations since China's entry into WTO, maintain the order of market competition, make active efforts to avoid anti-dumping sanctions imposed by foreign countries on China's exports, promote industry self-discipline and facilitate the healthy development of exports. The decision include the following aspects:

1. After adjustment, 30 categories of export products are subject to price review by the customs (see the Attachment of the Table of Export Products). All of the products are subject to Price Verification and Chop ("PVC") by the chambers, and no longer subject to supervision and review by the customs.

2. The relevant chambers of import and export and customs offices shall strengthen communication and cooperation among themselves in accordance with the Rules for Coordination with Respect to Customs Price Review of Export Products issued together with the Notice of the Rules on Price Reviews of Export Products by the Customs ([1997] MOFTEC GUAN ZONG HAN ZI No. 21), promptly report any issues arising from export price review exercise, jointly perform the export price review responsibility and file the annual price review report with MOFTEC and GAC.

3. Following the adjustment made under this Notice, the relevant chambers must, by April 20, 2002, submit to Guangzhou Commodity Price Information Center of GAC information on industry-wide negotiated prices for

those export products subject to price review, in both soft copy (in required format) and hard copy; in addition, each chamber shall file the name of personnel responsible for price review, addresses, telephone and fax numbers with the Foreign Trade Department of MOFTEC, the Duty Collection and Administration Department and Guangzhou Commodity Price Information Center of GAC.

4. The relevant chambers of import and export shall follow the PVC procedures pursuant to the Provisional Rules on Export Price Verification and Chop for Key Products subject to Price Review, which Rules were issued together with the Notice of the Rules on Price Reviews of Export Products by the Customs ([1997] MOFTEC GUAN ZONG HAN ZI No. 21). The adoption of PVC procedure shall be convenient for exporters while it is conducive for the chambers to coordinate export price and industry self-discipline. The PVC procedures shall be performed in a way that it could assist in maintaining good export order on the one hand and effectively reduce the export costs of enterprises, promoting the development of the industries and exports. From 2002, each relevant chamber shall learn from the experience of the Chamber of Machinery and Electronic Products in implementing classified PVC for binoculars, and select at least one of the products with the jurisdiction of its chamber for trial.

5. Given the drastically changing international market, the customs and chambers may suspend export price review for certain products with the approvals of the general members' meetings of the sub-chamber (coordination groups) and filing with GAC.

6. The adjusted catalogue of export products subject to price review shall become effective from May 1, 2002. The

Notice for Adjusting the Catalogue of Export Products Subject to Customs Price Review ([2000] MOFTEC GUAN FA No. 661) jointly issued by MOFTEC and GAC on December 25, 2000 shall become void then.

2003 ANNOUNCEMENT OF THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA, GENERAL ADMINISTRATION OF CUSTOMS OF THE PEOPLE'S REPUBLIC OF CHINA, DATED NOVEMBER 29, 2003, EFFECTIVE JANUARY 1, 2004

Announcement of Ministry of Commerce of the People's Republic of China, General Administration of Customs of the People's Republic of China (No. 36, 2003)

According to the relevant provisions of *the Foreign Trade Law of the People's Republic of China*, in order to maintain the order of foreign trade and create a fair trade environment and in response to the demands of the industries engaging in export and import, as well as on the basis of the coordination by relevant industrial associations, starting from January 1, 2004, the export of citric acid and 35 other commodities (please refer to Exhibit 1: Catalogue of Export Commodities Subject to the Verification and Chop System, hereinafter the "Catalogue") shall be subject to the Verification and Chop ("V&C") system on an experimental basis. The Catalogue shall be subject to further adjustment and announcement by the Ministry of Commerce in consultation with the General Administration of Customs, upon application of the relevant Chambers of Commerce and according to the development of various industries.

With respect to those included in the Catalogue, if the commodities are exported under general trade, processing trade with customer's materials, processing trade with self-sourced materials and processing trade with exported materials, the exporters shall declare to the Customs with export contracts affixed with the V&C

chop by the relevant Chambers of Commerce for Import and Export. The Customs shall not accept any application for export when the export contracts are not affixed with such chop. The commodity number shall be the basis for the Customs to verify export contracts with V&C chop, while the commodity name works only as a reference.

Each Chamber of Commerce for Import and Export shall follow the principle of facilitating export activities and promoting industrial development, and strictly observe the Procedures for Implementing the Verification and Chop System on Export Commodities (Exhibit 2).

Enterprises exporting by forging the V&C chop on the contracts will be punished by the Customs and Chambers of Commerce according to relevant rules.

We hereby make this announcement.

Exhibits:

1. Catalogue for Export Commodities Subject to the Verification and Chop System
2. Procedures for Implementing the Verification and Chop System on Export Commodities
3. Contact Persons of the Chambers Responsible for Implementing the Verification and Chop System

Ministry of Commerce of the People's Republic of China

General Administration of Customs of the People's Republic of China

November 29, 2003

Exhibit 1: Catalogue of Export Commodities Subject to the Verification and Chop System

(Omitted.)

Exhibit 2: Procedures for Implementing the Verification and Chop System on Export Commodities

China Chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts, China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters, China Chamber of Commerce for Import and Export of Foodstuffs, Native Produce And Animal By-Products, China Chamber of Commerce for Import & Export of Machinery & Electronic Products, China Chamber of Commerce of Medicines & Health Products Importers & Exporters and China Chamber of Commerce for Import & Export of Textiles (collectively "Chambers") shall be responsible for implementing the verification and chop system (hereinafter "V&C") on export commodities. The procedures are set forth as follows:

A. For the commodities included in the Catalogue of Export Commodities Subject to the Verification and Chop System (hereinafter the "Catalogue"), exporters shall deliver or fax (in urgent cases) the export contracts (or copies thereof) to the relevant Chambers for verification before Customs declaration. If it is verified that the contracts comply [with the relevant regulations and industry agreements], the Chambers shall fill in the Verification and Chop Form of China Chamber of Commerce for [*] (hereinafter "V&C Form") and affix the counter-forgery V&C chop at the designated block of the V&C Form and to the export contracts at the blocks where

the prices and quantities are specified, and then deliver them back to the exporters. The exporters shall declare to the Customs with the originals of the V&C Forms and the export contracts that have been verified and affixed with the V&C chop by the Chambers.

B. For contracts where exports will be in several batches, exporters may apply to the Chambers for V&C of the whole contracts. After the Chambers have verified that the quantities and prices of each batch comply with the relevant batch contracts, the Chambers shall use the same serial number on the V&C Forms for all the batches of exports.

C. The Chambers shall verify the submissions by the exporters based on the industry agreements and in accordance with the relevant regulations promulgated by the Ministry of Commerce ("MOFCOM") and the General Administration of Customs ("GAC"). For commodities of special standards or brands that are not included in the industry agreements of the relevant Chambers, the Chambers may refer to the same or similar types of commodities manufactured and exported during the same period of time. The relevant Chambers shall file the industry agreements with MOFCOM and GAC within 10 days after the public announcements [for such industry agreements] are made, and any modifications to such industry agreements shall be filed with MOFCOM and GAC within 10 days after such modifications are made.

D. The Chambers shall promptly verify the exporters' submissions, affix V&C chop to the conforming applications and deliver them back to the applicant enterprises via express mail within 3 business days (as per postmark). The Chambers shall not affix the V&C chop to non-conforming export contracts and shall notify the exporters within 2

business days. In the event that no response is received from the Chambers 10 days after the exporters have submitted the export contracts to the Cambers for V&C, such exporters shall report the same to MOFCOM.

E. The Chambers shall establish a V&C administration system, and report to MOFCOM and GAC every three months the implementation of the V&C system for the commodities included in the Catalogue of the passing quarter.

F. The Chambers shall not charge any fees other than the necessary documentation costs involved in the verification of export contracts that are subject to the V&C system. For V&C applications made by non-member exporters, the Chambers shall give them the same treatment as to member exporters.

G. The Chambers shall keep confidential the exporters' submissions, and shall not willfully disclose such submissions.

H. For V&C related inquiries, the first person being inquired shall be responsible for giving responses. When being inquired by the Customs relating to the V&C, the contact persons of the Chambers (as listed in Exhibit 3) shall reply within 24 hours.

Exhibit 3: Contact Persons of the Chambers Responsible for Implementing the Verification and Chop System

(Omitted.)

SELECTED EXHIBITS TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, FILED SEPTEMBER 22, 2006

EXCERPT FROM THE CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS INFORMATION WEBSITE

[See source for logo] www.cccmhpie.org.cn	China Chamber of Commerce of Medicines and Health Products Importers and Exporters Information Website

Home	Overview of the Chamber of Commerce	Board Member Organizations	Membership Information	Online Exhibition	On-line FAQ	Contact Us

Information Department	Department of Traditional Chinese Medicine	Department of Western Medicine	Membership Department	Exhibition Department	Legal Department	Office

Concerns remain while good news on our country's vitamin C exports

——————————[Search]	China is the largest vitamin C producer and exporter in the world. Vitamin C is the largest type of western medicine-ingredient produced by China. The two-step fermentation method invented in our country is on par with international level. In recent years, the recovery rate of vitamin C from sorbitol has been improved to over 60% from 48%, thus significantly increase the Chinese market share

	of vitamin C on the world market. Currently, the annual vitamin C consumption on the international market is around 80,000 tons, and our country exports about 43,000 tons a year.
——————>> ICQ Service]	Currently there is a tripartite confrontation on the international market, with BASF AG of Germany, F. Hoffmann-La Roche of Switzerland and the four major Chinese vitamin C manufacturers competing against each other.
Receive ID _____ Concerns remain while there is good news about our country's vitamin C exports Send Code_____ Password_____	Between May 2000 and late December 2001, vitamin C in our country experienced the second "price war" since 1995 export prices plummeted from 5.0 US Dollars to less than 2.8 US Dollars; which has caused direct economic losses about 200 million US dollars. Relevant countries are ready to launch their anti-dumping lawsuits against China soon.

Confirmation _____4960 Deliver Register	In December 2001, through efforts by the Vitamin C Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers and Exporters, each domestic manufacturers were able to reach a self-regulated agreement successfully, whereby they would voluntarily control the quantity and pace of exports, to achieve the goal of stabilization while raising export prices. Such self-restraint measures, mainly based on "restricting quantity to safeguard prices, export in a balanced and orderly manner and adjust dynamically" have been completely implemented by each enterprises' own decisions and self-restraint, without any government intervention. Beginning on May 1, 2002, vitamin C was listed as a product requiring price reviews by China's Customs and a seal of pre-approval by the China Chamber of Commerce, which has provided powerful oversight and safeguards for the implementation of self-restraint agreements among domestic manufacturers.

	Through the work of the Vitamin C Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers and Exporters during the past year, and due to products discontinuation or reduction by foreign multi-national firms such as BASF Takeda, Merck and F. Hoffmann-La Roche of the United States, export prices of vitamin C have increased to over 3.35 US Dollars from 2.80 US Dollars in late 2001. Currently, the actual quotes have reached about 10.00 US Dollars. According to Custom's statistics, our country's vitamin C exports reached 146 million US Dollars in 2002, taking up 4.9% of exports on western medicine-ingredient by our country, which has created an unprecedented good atmosphere for domestic vitamin C business. According to estimates, every 10 cents in US Dollar increases in the vitamin C export will generate earnings of nearly 4 million US Dollars for the entire industry. If the export price of 2.80 US Dollars prior to the industry self-restraint is used as the base number, in 2002, earnings from our domestic vitamin C exports in 2002 increased by about 20 million US Dollars.

	The current good situation for the vitamin C exports has been hard-won and is the result of the short-term general intersection of different factors. Currently, abnormal export price increases may stimulate new manufacturing enterprises to join the competition. In the meantime, we expect that the supply of vitamin C will soon exceed demand when foreign multi-national firms resume their production. This will lead to a reduction or precipitous drop in profits from vitamin C, or even negative profits for certain domestic enterprises. Regarding the current export situation for vitamin C, we must remain clear-minded, as we faced so much experiences and lessons from the past. The manufacturing enterprises must remain cool-headed and soundly judge the situation of vitamin C on the international market, and make joint efforts with the China Chamber of Commerce of Medicines and Health Products, to avoid vicissitudes in the production and exports of vitamin C, for maintaining a stable, health situation for it for the long run. (Department of Western Medicine) Print this page Recommend to a friend

MINUTES OF THE FEBRUARY 26, 2004 PARACETAMOL SUBCOMMITTEE MEETING, DATED MARCH 9, 2004

www.cccmhpie.org.cn

Document dated: March 09, 2004

Minutes of the Paracetamol Sub-committee Meeting

The 2nd meeting of the Paracetamol Sub-committee pioneer year of Director-council convened on February 26, 2004 in Hangzhou. Management representatives from the following 7 companies attending the meeting:

1. Zhejiang Conler Pharmaceutical Co., Ltd[1]
2. Huzhou Konch Pharmaceutical Co., Ltd[2]
3. Changshu Huagang Pharmaceutical Co., Ltd[3]
4. Anhui Bayi Chemical Company[4]
5. Anwei Topsun Pharmaceutical Manufacturing Co., Ltd. under the Topsun Group[5]
6. Shenzheng Zhonglian Medicines Trading Co., Ltd
7. China Jiangsu International Economical Cooperation Company.[6]

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1. Zhejiang Conler website : www.conlerpharm.com

2. Konch Pharmaceutical website : www.hzkonch.com

3. Huagang Pharmaceutical website : www.huagang-pharm.com

4. Anhui Bayi Chemical Co., website : www.bengbu.gov.cn/zdqy/bbby/1.htm

5. Anhui Topsun Group website : (www.topsun.com)

6. China Jiangsu International Economic Company website: www.china-labor.net/qyjs/list.asp?companyid=571)

Representative from one management unit was absent. Vice Chair-person of the CCCMHPIE Mr. Zhang Changxin, Director of Western Medicine Division Mr. Qao Haili and other representatives from the Chamber of Commerce also attended the meeting.

Attendees reflected that the price of Acetaminophen, the main raw material of Paracetamol has increased more than 20% since last September till now. This month, it has surpassed the 17,000 yuan/ton, resulting in the corresponding increase on the marginal profit and manufacturing cost of Paracetamol. The export tax rebate has also reduced by 4 percentage points, adding onto cost of export. In overseas, India and other countries are actively purchasing Acetaminophen to resume their productions of Paracetamol, which is posing a very large threat to China's Paracetamol export. The industry is currently facing these internal difficulties and external threats. Attendees fervently indicated their wish to use the example of the Vitamin C Industry Self-regulation as management model to improve the export situation of Paracetamol.

In reply to this, the Chamber of Commerce Vice Chairman Mr. Zhang Changxin indicated that certain China products such as Vitamin C are leading the dominant position in the international market as all aspects of the products have been developed and matured whereas Paracetamol is still changing. Although China is considered a major Paracetamol exporter in the global market, competition among companies is still very aggressive. It is possible to achieve certain beneficial results via industry self-regulation at this stage. This

Sub-Committee is a very effective form of organizational method, without the Sub-Committee it is difficult to achieve resolutions and consensus. Formation of the Sub-committee is to lay down the foundation for industry self-regulation. The function of the chamber of commerce is to coordinate, organize and bring the companies together via certain means to ensure the effective progress of self-regulation. The articles of association are a very good resource that should be put into use. Through the enforcement of the articles of association, consensus within the industry can be established and thus achieve the goal of industry self-regulation. The core of self-regulation is to collectively build an automatic mechanism that will adjust the market, not necessarily reduces the output. Establishing the mechanism for self-regulation is a gradual process, it is not possible to reach the goal in one giant step. First, the consensus for self-regulation has to be established, follow by gradual actualization of the self-regulation. Fixing the lowest selling price in the industry is just one of the methods, the key is how to push up the price with joint effort.

REPORT ON HENAN XINXIANG HUAXING PHARMACEUTICALS' REFUSAL TO COMPLY WITH THE INDUSTRY'S SELF-REGULATION AGREEMENT, DATED DECEMBER 5, 2003

www.cccmhpie.org.cn

China Chamber of Commerce of Medicines & Health Products Importers & Exporters Information Website.

(Document dated December 5, 2003.)

Report on Henan Xinxiang Hoaxing Pharmaceuticals'[1] Refusal to Comply with the Industry's Self-Regulation Agreement[2]

India is a major export market for China's Penicillin Industrial Salts, and accounts for 70% - 75% of all exports. Since May 2003, the export volume of Penicillin Industrial Salts has been increasing rapidly, and the export price has continued to fall. Not only has the fall in the export price affected the economic benefits of the various Penicillin Industrial Salts manufacturers, but it has also caused many negative repercussions relating to the implementation of safety protection measures on the import of China's Penicillin being considered by the government of India.

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1. Henan Xinxiang Huaxing Pharmaceuticals, aka Hua Xing Medicines Factory, is located in Xinxiang city of Henan province in the central part of China. Website: http://www.xxhx.com.cn

2. Penicillin Industrial Salt- the common form that is used in the industry is a powder form, known as Penicillin G Potassium First Crystal, industrial standard- USP25. (abbrev. Penicillin G)

In response to the requests of various enterprises to protect India's national and entrepreneurial interests as well as to protect the Indian market, the Chamber of Commerce convened the Penicillin discussion forum on July 31, 2003 and the Penicillin Manufacturers' Summit on September 29, 2003. Both meetings studied and discussed the implementation and enforcement of industry self-regulation, and the cooperative negotiations were able to reach a common agreement.

The following manufacturers signed the "China Penicillin Industrial Salt Manufacturers' Agreement on Self-Regulation" and pledged to carry out the content set forth in the agreement:

1. North China Pharmaceutical Group Co., Ltd. (www.ncpc.com)
2. Sichuan Pharmaceutical Ltd. Company
3. Hayao Pharmaceutical Group Main Factory (http://www.hayaozong.com.cn)
4. Shandong Lukang Pharmaceutical Group (http://www.lkpc.com)
5. Zhangjiakuo Pharmaceutical Main Factory
6. Hebei Zhongnuo Pharmaceutical (Shijiazhuang) Co., Ltd (http://www.znpc.cn)
7. Henan Xinxiang Huaxin Pharmaceutical Company (http://www.xxhx.com.cn)
8. Jiangxi Dongfeng Pharmaceutical Ltd. Company (http://www.jxdfp.com)

9. Huacheng Pharmaceutical Plant (a subsidiary of North China Pharmaceutical Group)

They all expressed their commitment to comply with the terms of the agreement. In addition, Tangshan Huaqing Biochemical Pharmaceutical Co., Ltd. (http://www.hqyaoye.com), a foreign enterprise that has very little production of Penicillin, took the initiative to send a representative to the Chamber of Commerce, requesting to be included in the industry's self-regulatory affairs. All the above mentioned manufacturers represented the complete production volume of the nation's Penicillin industrial salt. It was the first ever conference of the entire Penicillin industry.

After having signed the agreement, however, the largest exporter, Henan Xinxiang Huaxin Pharmaceutical, refused to comply with the content of the agreement. Within the first month of the implementation of self-regulation (in October), Henan Xinxiang Huaxin Pharmaceutical broke the export quota of 138.16 tons.

Upon the request of various companies, the Chamber of Commerce convened another discussion forum on December 2, 2003. Due to Henan Xinxiang Huaxin's non-compliance, the meeting was unable to establish a consensus to continue with the industry's self-regulation policy, and the "China Penicillin Industrial Salt Manufacturers' Agreement on Self-Regulation" was forced to be aborted. Both the Chamber of Commerce and the general Penicillin manufacturers are reluctant to see the abortion of self-regulation, as its negative repercussions would greatly increase the probability

that India would enforce "Safeguard"[3] measures on the nation's Penicillin Industrial Salt. Once the "Safeguard" measures are implemented, the effect on the nation's Penicillin manufacturing industry would be destructive.

Henan Huaxin has undeniable responsibility for willfully acting in its own self-interest--to the detriment of the industry as well as national interests. Nevertheless, we still hope that Henan Huaxin will consider the bigger picture, return to the path of industry self-regulation as soon as possible and help realize a "win-win" situation for all.

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3. Refers to the WTO Agreement on Safeguards. A WTO member may restrict imports of a product temporarily (take "Safeguard" actions) if its domestic industry is injured or threatened with injury caused by a surge in imports. Here, the injury has to be serious. Safeguard measures were always available under GATT (Article 19).

DECLARATION OF PROFESSOR JAMES V. FEINERMAN, DATED AUGUST 15, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MDL. No. 1738

CLASS ACTION

IN RE VITAMIN C ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO: ALL CASES

DECLARATION OF PROFESSOR JAMES V. FEINERMAN

I. Introduction

1. I am the James M. Morita Professor of Asian Legal Studies at Georgetown University Law Center and have been admitted as an attorney to practice before the courts of New York. Among other courses, I teach a course in Chinese Law. I have taught at Georgetown, and also as a visitor at Harvard and Yale Law Schools, for over twenty years.

2. In addition to my work as a Professor of Law, I served as Editor-in-Chief of the *China Law Reporter,* a publication of the American Bar Association's Section of International Law and Practice, from 1986-1998; as Chair of the Committee on Legal Education Exchange with China, from 1993-1997; as Chair of the Asia Law Forum, of the Association for Asian Studies, from 1991-1996; as a Trustee of the Lingnan Foundation from 1994-2003; and am currently a Trustee of the Yale-China

Association. From 1993-1995, I served as Director of the Committee on Scholarly Communication with China, Washington, D.C., the national organization sponsoring official academic exchange between the United States and China, sponsored by the National Academy of Sciences, the American Council of Learned Societies and the Social Science Research Council. From 1983-1985, I served as Administrative Director and Fellow of the East Asian Legal Studies Program at Harvard Law School, Cambridge, Massachusetts. In 1982-83, I taught as a Fulbright Lecturer on Law at the Peking University Law Department, Peking, and taught at Tsinghua University Law Faculty from February to June, 2006. My curriculum vitae is attached.

3. I have been retained as an expert on Chinese law to examine and review the exhibits provided by the Ministry of Commerce of the People's Republic of China, and to determine whether the exhibits support the defendants' contention that the conduct complained of was compelled by the government of China.

4. I have reviewed the Complaint, defendants' motion to dismiss, the amicus curiae brief of the Ministry of Commerce of the People's Republic of China in support of defendants' motion to dismiss and its exhibits. In addition, I have relied on my own knowledge of Chinese law and regulations and my own study of the Chinese legal system and have also consulted relevant Chinese law and secondary legal materials.

5. Based on my review, it is my opinion that defendants' conduct as alleged in the Complaint was not compelled as a matter of Chinese law.

II. Analysis

6. The Chinese versions of regulations, rules and inferior legal enactments submitted along with English translations as exhibits to the Declaration of Joel M. Mitnick, are, in most cases, not copies of verified and chopped legal documents on file with a relevant governmental entity responsible for its administration. Instead, exhibits C, D, H, J and K are taken from websites or collections. As a result, those exhibits cannot, on the face of the documents, be verified as the law then in force. In China, the chain of custody and transmission of documents usually is illustrated by a combination of a signature and an official seal or "chop" (which, in the original, would have been done with red ink). Documents lacking the verified seal or chop would not be considered authoritative in China.

7. In the above cases the notarial certificates attached to the exhibits merely certify the accuracy of the English translation and/or the authority of the ministry representative who has affixed his or her signature on the English translation.

8. The following is my analysis of each exhibit attached to the Mitnick declaration.

9. Exhibit A and B to the Mitnick declaration are not Chinese law and do not relate to Chinese law.

10. Exhibit C to the Mitnick declaration is neither a government law nor a regulation. The "regulation" contained therein is the articles of association adopted by the China Chamber of Commerce of Medicines & Health Products Importers and Exporters (the "Chamber"), which is not a governmental entity. The rest of the

document contains a brochure advertising the Chamber. Moreover, the "regulation" attached to the Mitnick declaration does not contain a chop.

11. Exhibit D to the Mitnick declaration contains the Measures for Social Organization for MOFTEC ("Measures"), which is the predecessor to MOFCOM. In the Chinese legal hierarchy, "measures" are enacted pursuant to regulations, which are in turn created pursuant to an enabling law.

12. Article 4 of the Measures establishes that MOFTEC has merely an administrative role with respect to foreign trade and economic organizations. Articles 12 and 13 make clear that MOFTEC's role is one of overall operational guidance particularly with respect to formation and reporting. Articles 15 and 16 delineate the daily management and functions of MOFTEC as supervising the establishment of organizations and the selection of personnel, providing oversight of budgets (including salaries and benefit plans) and of participation in civic projects (such as blood drives and tree planting). Articles 19 and 20 provide for a supervisory and inspection role on the part of MOFTEC with regard to a very limited number of functions: (1) implementing higher level laws; (2) following their own articles of association; and (3) the expenditure of funds. These supervisory and inspection functions do not contemplate compulsion of its organizations or their members and nowhere require behavior such as that alleged by plaintiffs.

13. These Measures do not compel price-fixing behavior and nothing in them explains how such behavior could be compelled pursuant to these measures. Even if they did, the Measures themselves do not indicate whether

MOFTEC ever exercised any authority to compel price-fixing conduct. In any event, these Measures, promulgated in 1991, could not at the time of their promulgation compel conduct that did not begin until ten years after their promulgation. Moreover, the Measures do not contain a chop.

14. Furthermore, nothing in the "regulation" contained in Exhibit C, purporting to establish the Chamber, indicates that the "regulation" was enacted pursuant to these Measures. But the "regulation" was enacted in 2001, ten years after the adoption of the Measures.

15. The "Notice of Ministry of Foreign Trade and Economic Cooperation" attached to the Mitnick declaration as Exhibit E concerns personnel management and was issued pursuant to the Foreign Trade Law and relevant State Council regulations. It does not purport either to fix prices or to compel price fixing behavior.

16. Exhibit F to the Mitnick declaration is an approval of the establishment of the vitamin C subcommittee dated March 23, 1998. It acknowledges receipt of a document requesting the establishment the subcommittee and approves the request. As such, it only authorizes the creation of the entity. This reflects the reality in China that an organization not expressly allowed would be prohibited, in contrast to the long-standing Western norm that anything not expressly prohibited is allowed. By itself it does not authorize anything but merely restates the "responsibilities" detailed in the request for establishment.

17. Exhibit G to the Mitnick declaration, the Charter of the Vitamin C Sub-Committee, is the charter of a non-governmental organization and is not a law or

regulation of the Chinese government. It asserts in Article 1 that it is constituted in accordance with Chinese law and regulations but there is no indication that any governmental entity approved this charter. It is signed only by the person who purports to be the director of the legal affairs department of the Chamber itself, which is a social organization and not a governmental entity. There is no indication that it was filed with or required by any higher level or governmental entity.

18. Exhibit H to the Mitnick declaration is a MOFTEC and SDA Notice of 1997, which became effective January 1, 1998. As noted on the face of the exhibit itself, the Notice was abolished effective March 21, 2002, the day before the formation of the Chamber as demonstrated in Exhibit C, by the *List of 26 Abolished Ministerial Regulations of the Fourth Batch by Ministry of Foreign Trade and Economic Cooperation.* The "strict control" of the scale of Vitamin C production as set forth in Article 1 of that Notice violated China's obligations under the General Agreement on Tariffs and Trade ("GATT") as a member of the World Trade Organization ("WTO"). The preamble of the Notice stated that its purpose was to: "rectify the operation order and optimize the operational team of Vitamin C export, ... improve the competitiveness of our Vitamin C products in the international market, promote the healthy development of Vitamin C export and maintain the interest of our country and enterprises ...." Thus, this Notice was a violation of WTO and GATT rules, a restriction on international trade, and was repealed.

19. Moreover, the Chinese version of the exhibit cannot be the document as originally filed with MOFTEC because it contains both the notice of its abolition in 2002 and an indication that it was downloaded from a website that did

not exist in 1997. In addition, I note that the document contains a notarial certificate about its translation and the authenticity of its translation but does not contain a chop.

20. Exhibit I to the Mitnick declaration contains the interim regulations of the Ministry of Foreign Trade and Economic Cooperation promulgated in 1996, which address punishment for "lower than normal" export pricing. These are general regulations that do not address vitamin C. Article 5 of the regulations defines "lower than normal price" as meaning that the export price is lower than the necessary price for the product of the enterprise. These regulations do not compel the price-fixing alleged by plaintiffs.

21. Exhibit J to the Mitnick declaration is a MOFTEC & Customs Notice adjusting the catalogue of export product subject to price review by customs in light of China's WTO obligations. The Chinese original is a print-out from a website. The translation provided states that the Notice became effective May 1, 2005. The actions described by the notice are to be taken by the non-governmental Chambers of Commerce. The Chambers of Commerce in tum notify MOFTEC and Customs of their action. Nothing in the Notice compels the price-fixing alleged by plaintiffs.

22. I reviewed the language in Exhibit J, paragraph 4, which states "[t]he adoption of PVC procedure shall be convenient for exporters while it is conducive for the chambers to coordinate export price and industry self-discipline," because the translation was ambiguous. What was translated as "shall be convenient for exporters while it is conducive for the chambers to coordinate export price and industry self-discipline" should more accurately be translated as follows: "should benefit the chambers

while being conducive for their coordination of prices and enterprise self-regulation." The language of the document thus refers to the autonomy of the chambers in price setting and administering their own affairs. Moreover, in paragraph 5 of Exhibit J, the Notice states that "[g]iven the drastically changing international market, the customs and chambers may suspend export price review for certain products" based solely on approval by the subchamber and the filing of a report.

23. The Chinese original of Exhibit K to the Mitnick declaration was also printed from a website and is no more than an announcement of MOFCOM and the Customs Administration enjoining the Chambers to facilitate export activities and to observe the procedures for implementing the verification and chop system. The translation provided suggests in paragraph A to exhibit 2 that the verification and chop process requires compliance with "relevant regulations and industry agreements." This does not correspond with anything in the Chinese original, which references only verifying correspondence with the export contracts. In the announcement itself, the only legal sanction threatened is punishment by customs and the Chambers of Commerce for forging the V & C chop. There is no requirement for any participation in an industrywide agreement with regard to price.

Affirmed

/s/_____

Professor James Feinerman

Dated: August 15, 206

SELECTED EXHIBITS FROM THE SUMMARY-JUDGMENT RECORD BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

SELECTED EXHIBITS TO THE DECLARATION OF ANNABELLE CHAN IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR DETERMINATION OF FOREIGN LAW AND ENTRY OF JUDGMENT PURSUANT TO RULE 44.1, FED. R. CIV. P., FILED NOVEMBER 23, 2009

LETTER FROM JOEL M. MITNICK TO THE HONORABLE JAMES ORENSTEIN, MAGISTRATE JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, FILED SEPTEMBER 29, 2008

September 29, 2008

FILED BY ECF

COURTESY COPY BY HAND

The Honorable James Orenstein

United States District Court

Eastern District of New York

225 Cadman Plaza East

Brooklyn, New York 11201

Re: *In re: Vitamin C Antitrust Litigation*, MDL No. 1738

Dear Judge Orenstein:

I have read the transcript of the hearing held in this matter before you on September 10, 2008 and Your Honor's docket Minute Entry of the same date. On behalf of my client, the Ministry of Commerce of the People's Republic of China, I write to address an issue that was raised at the hearing.

In both their written submission with respect to the pending motion to compel and at the hearing, plaintiffs suggested that the fact of the Ministry's common interest with the defendants somehow disqualifies the Ministry as an *amicus*[1]. *See, e.g.*, Transcript of Hearing before Hon.

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1. At the Ministry's first appearance in this litigation, I identified that the Ministry had two interests in this litigation, one that the Ministry had in common with the defendants and one that was an independent interest of the Ministry. With respect to the common interest, I stated that the Ministry desired to present its views as a foreign sovereign of the regulatory framework governing these specific defendants in order to "present[ ] the predicates for what Mr. Bomse [one of defense counsel] and others have described as a foreign sovereign compulsion defense." (Transcript of hearing before Hon. James Orenstein, May 3, 2006, at 38.) As stated more recently, "by challenging the compelled conduct, the plaintiffs in essence challenge under US antitrust law the Chinese government's right to compel compliance by its own corporate citizens, and solely within its borders, of a pricing regime designed by the Chinese government for the purpose of maintaining an orderly export market." Letter of J. Mitnick to Hon. James Orenstein, dated August 29, 2008. It should, therefore, come as no surprise that the Ministry and the defendants have coordinated their strategies in connection with their

James Orenstein, September 10, 2008, at 36 ("[the Ministry has] taken the position as an amicus which traditionally is an impartial friend of the Court."). Yet the Ministry has explained from the outset that it sought the form of *amicus* status only because, "[s]ince 1978, the U.S. government has encouraged foreign governments to present their views concerning pending judicial proceedings directly to the U.S. courts, and the U.S. Solicitor General has taken the position that a foreign government's submission of its views in the form of an amicus curiae brief should be 'dispositive.'" Brief of Amicus Curiae, the Ministry of Commerce, in Support of Motion to Dismiss, at 1-2, citations to supporting authority omitted; *see, also,* Application [to Judge Trager] for Permission to File a Brief Amicus Curiae at 2; transcript of hearing before Hon. James Orenstein, May 3, 2006, at 40-41. Accordingly, the Ministry's appearance in this proceeding to express the views of a foreign sovereign, even an interested foreign sovereign (as would be the case in *all* foreign sovereign compulsion cases), is procedurally proper.

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common interest in having the complaint dismissed. *See, e.g.,* Letter of Richard S. Goldstein to Hon. David G. Trager, dated June 26, 2006 (informing Judge Trager in advance of defendants' knowledge that the Chinese government would seek permission to submit an *amicus* brief on defendants' behalf). In addition, I articulated an interest in the litigation that the Ministry held independently of the defendants. "The government very much would like to be able to assist the Court in establishing the principle that these specific kinds of Chinese laws resulted in compelled conduct that created an immunity from antitrust law. The Chinese government's interest in having the Court hear that view and establish that principle is completely independent of the defendants' interest in having themselves released from the case." (*Id.* at 43-44.)

The Ministry would again like to express its appreciation to the Court for granting it permission to submit a brief letter statement in connection with the pending motion to compel. Although the Ministry did not seek permission to argue at the hearing, it would, of course, be pleased to entertain any request by the Court for further assistance.

Respectfully submitted,

/s/_____

Joel M. Mitnick

Counsel for *Amicus* The Ministry of Commerce of the People's Republic of China

STATEMENT IN *IN RE VITAMIN C ANTITRUST LITIGATION* OF THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA, DATED JUNE 9, 2008

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

STATEMENT IN *IN RE* VITAMIN C ANTITRUST LITIGATION

June 9, 2008

Introduction

Amicus The Ministry of Commerce of the People's Republic of China (the "Ministry") authorizes its Department of Treaty and Law to respectfully submit this Statement (together with an authorized English translation) in response to plaintiffs' April 24, 2008 Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss ("Supplemental Opposition"). At the outset, the Ministry would like to express its continuing appreciation to this Court for permitting the Ministry to submit to the Court the official views of the People's Republic of China.

The Ministry would also like to take this opportunity to ratify the *amicus* filing that was submitted previously on its behalf. Although in filing that brief the Ministry followed the procedures advised by the U.S. State Department with respect to the preferred method by

which a foreign government should make its views known to a U.S. court, the Ministry wants the Court to know that it participated actively in the drafting of that brief, which was reviewed and edited word-for-word in Beijing by officials of the Ministry and the U.S. counsel engaged by the Ministry. That brief accurately sets forth the views and understandings of certain PRC government agencies, serving as an official view on behalf of the Ministry. The Ministry's U.S. counsel, acting within the scope of its authorization, submitted relevant documents to this Court on behalf of the Ministry in line with U.S. law and applicable procedures. The Ministry will assume the Court's familiarity with the contents of its *amicus* brief and will not repeat the facts or arguments it contains.

The Regulatory Regime

The Supplemental Opposition reflects a misunderstanding of the nature of the PRC government's regulation of the vitamin C industry that the Ministry's initial *amicus* brief was intended to dispel. Throughout their submission, plaintiffs trivialize China's organs of regulations where those organs differ in structure or function from ones more familiar to the plaintiffs.

As explained in the Ministry's *amicus* brief, the system of regulation the Ministry imposed on China's vitamin C export industry centered around a process not a price. The Ministry was careful to direct its U.S. counsel to explain to the Court that specific chambers of commerce, *when authorized by the Ministry to regulate*, act in the name, with the authority, and under the active supervision, of the Ministry. When acting in this manner, a chamber performs a governmental function so authorized under

Chinese law. In this case, the Ministry specifically charged the Chamber of Commerce of Medicines and Health Products Importers and Exporters (the "Chamber") with the authority and responsibility, subject to Ministry oversight, for regulating, through consultation, the price of vitamin C manufactured for export from China so as to maintain an orderly export.

In summary, the Ministry wishes that this Court would continue to trust and adopt the views contained in the *amicus* brief submitted by the Ministry, and support the Defendants' Motion to Dismiss.

Accordingly, the Chinese government respectfully submits that, to the extent the plaintiffs take issue with the Chinese government's sovereign actions over the conduct solely of its own citizens, that issue should not be addressed in the courts of the United States but rather through bilateral trade negotiations conducted by the executive branches of the respective sovereign nations involved consistent with recognized norms of international law and diplomacy.

Respectfully submitted,

Department of Treaty and Law
Ministry of Commerce of the
People's Republic of China

[affixed seal]

REPORT OF PROFESSOR SHEN SIBAO, DATED FEBRUARY 19, 2009

Dean and Professor of Law
University of International Business & Economics
Beijing, China

Dean
Law School of Shanghai University
Shanghai, China

I. INTRODUCTION

Summary of Credentials

1. I am a Professor of Law, a doctoral advisor and the Dean of the Law School of the University of International Business & Economics in Beijing, China, which is a leading law school in China with a special focus on international law and economic law. I also serve conjunctively as the Dean of the Law School of Shanghai University in Shanghai, China. I have taught several law courses, including in particular, courses on China's Foreign Trade Law, international commercial laws, and corporate investment law. I am a member of the Law Group of the Degree Commission of the State Council of China and the Social Science Commission of the Ministry of Education of China, a specially-invited advisor to China Council for the Promotion of International Trade, and the Chairman of China International Economic Law Studies Association.

2. I have been admitted as an attorney to practice law in China for twenty five years. I serve as a Special Advisor to the Supreme People's Court, a member of the Central Government Senior Officials Lecturer Group and the main speaker at the Central Legal System Seminar.

I have been a senior arbitrator and Vice Chairman at the China International Economic and Trade Arbitration Commission for ten years as well as an arbitrator at many other Chinese and international arbitration institutes including The Commercial Arbitration Chamber of Paris, the Korea International Commerce Arbitration Commission, and the London Grain and Feed Trade Association. I am also a mediator at the United Nations International Center for Settlement of Investment Disputes.

3. I have also studied extensively abroad and in the US. From 1981 to 1983, I was in the Parker School Program at Columbia University in Comparative Law. From 1999 to 2000, I was a visiting scholar on the Fulbright Program teaching at Brooklyn Law School. My curriculum vitae is attached hereto as Appendix A.

4. I have researched and written extensively on issues related to China's Foreign Trade Law, foreign trade issues and international economic trade dispute resolutions. I have also participated in the drafting and revision of the Foreign Trade Law, the Corporation Law and the Arbitration Law as well as regulations and administrative rules related to foreign trade issues. I have been a special counsel to the China Ministry of Commerce ("MOFCOM") previously known as the China Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") (both entities sometimes being collectively referred to as "MOFCOM") on various matters, and I am in charge of several research programs sponsored by the Department of Treaty and Law, Department of Foreign Trade, and Department of Trade in Services of the MOFCOM. A list of my publications is attached hereto as Appendix B.

Nature of Assignment

5. I have been retained by Defendants in this case as a Chinese legal expert to furnish this Report to explain the nature of the regulatory system that operated in China under the supervision of China Chamber of Commerce of Medicines and Health Products Importers & Exporters (the "Chamber") with authority delegated by MOFCOM, and that applied to the Defendants, as manufacturers of vitamin C throughout the period relevant to this litigation and to further consider whether certain public materials of the Chamber or documents referred to by the Plaintiffs and referenced by this Court are inconsistent either with this regulatory system or with Defendants having been obliged by the Chinese government to establish a coordinated pricing and output regime for vitamin C exported from China.

6. In undertaking this assignment, I have reviewed Plaintiffs' Third Amended Complaint, various papers submitted by both sides in connection with Defendants' Joint Motion to Dismiss including Memoranda of Law and Supporting Papers, the Amicus Curiae Brief of MOFCOM and supporting exhibits, the Supplemental Declaration of MOFCOM, the Declaration of Professor James V. Feinerman dated November 14, 2008 ("Feinerman Decl.") and this Court's November 6, 2008 Memorandum and Order. I have also reviewed documents produced by Defendants and deposition testimony taken of them, relevant Chinese laws, regulations and research literature, and have consulted with knowledgeable government officers regarding the Chinese export regulatory regime. My hourly rate is US$600.

Summary of Conclusions

7. Based on my experience and expertise, as above described, and the analysis that I have made of the facts regarding the regulation of vitamin C, the following is a summary of my conclusions, the basis for which will be set forth at length in the sections and paragraphs which thereafter follow:

8. Over approximately the past 30 years, China has been in the process of transforming its economy from a command economy, sometimes referred to as a "planned economy," in which the State controls entirely both domestic and international trade, to a modified market economy, referred to as a "socialist market economy" in which private enterprises are permitted to exist and operate for profit subject, however, to government control designed to cause certain important Chinese industries to operate in a coordinated fashion in order to insure their stability and further their profitability by avoiding what China regards as inappropriate forms of harmful competition that would impede the development of successful and profitable industries that China regards as being in its national interest as an emerging economic power in the world.

9. Consistent with this important national economic policy, vitamin C has, for many years, been regarded as a strategically important industry in China and has been subject to mandatory industry coordination in order to avoid what China considers to be "harmful" competition, thereby helping to promote the development of a strong export commerce in this area. Although the mechanisms that have been employed to ensure this coordination and overall national profitability have varied somewhat over time, as circumstances have changed, at all times vitamin C was a regulated commodity

with controls exerted over price and/or output in order to advance the national interest, as above described.

10. One of the principal ways in which China has implemented its regulatory interests in many critical areas of economic development is through the creation and operation of what are referred to as "China Chambers of Commerce for Import and Export" (the "Import and Export Chambers"). In the case of strategic industries, including vitamin C, these chambers represent the Chinese government in the sense that they are charged with enforcing government economic policy with respect to industries of concern. This role is reflected in various regulations and directives promulgated by MOFCOM. Companies that are subject to the oversight of the Import and Export Chambers are required to participate in the relevant chambers and are subject to their rules. A refusal to abide by such rules is subject to sanction, including loss of the right to export entirely.

11. In the case of vitamin C, the Defendants were at all times required to act in a coordinated fashion consistent with government economic policy and the national interest in avoiding harmful export competition. In reaching agreement as to specific actions, the parties were acting pursuant to a regulatory process that is well-understood and applied broadly in China, known as "self-discipline." That process, by design, involved communications among the relevant parties with a goal of seeking agreement on a unified course of action that would implement the mandatory goals of Chinese policy as I have described above. This approach was efficient in the sense that the companies involved in the industry were in the best position to know how to best implement the mandatory goals of Chinese national industrial policy.

12. It is important to understand that the mandatory policy goals themselves were neither subject to debate, nor could they be ignored. The policy of the government was mandatory and participation in the process designed to implement that policy was mandatory. Thus, at all times it was mandatory for companies subject to regulation under a regime of self-discipline to participate in the government's mandated process in order to further China's goals of avoiding harmful and destructive forms of competition. Furthermore, the Chamber regulating vitamin C operated in an active oversight fashion and was empowered to insure such cooperation. That fact is seen quite vividly in the fact that on almost all occasions when the Defendants in this case met to discuss price or output, it was under the auspices of, and with the direct participation of, the Chamber.

13. During at least some portions of the transitional period from a command to a socialist market economy, the Chinese government did not itself establish specific export prices or quotas as the means of carrying out its mandatory policies. Instead, as explained in the preceding paragraph, the Chinese government established the policy goals, created a mandatory process of regulation through the Chamber, and then required the vitamin C exporters to engage in that process with the goal of implementing the policy through their own interactions and self discipline, all under the supervision of the Chamber. In no way was participation in the process, or refusal to act in a manner consistent with China's national economic policy, "voluntary" in the sense that it could be ignored. The policy was mandatory as was participation in the process of coordination through the Chamber.

14. The Chinese regulation and supervision policy to which I refer has been in place since at least the mid-1980's as a function of basic governmental policy. It has applied based upon Chinese national economic goals adopted with respect to certain Chinese industries and economic sectors viewed as critical to China, regardless of the size or presence of those industries overseas, and regardless of their market power or lack thereof in an overseas context. To understand the regulation that has taken place since 2001, one must first understand the historical context, and how that regulation has developed and evolved over time. In the paragraphs which follow, I will describe the evolution, based in large part upon my personal experience, and on the facts and record in this case as furnished to me and informed by my expertise.

II. ANALYSIS

A. The China Legal System

15. Before turning to a more detailed discussion of the regulatory system as applied to vitamin C, I believe that it may be useful to provide some initial comments regarding the nature of the Chinese legal system and those characteristics of it that are a product of China's specific social and cultural history and environment. It is important to understand the nature of this legal system in evaluating the balance of this Report.

16. In China "law," in the sense of obligation that must be obeyed, comes from a variety of different sources. In very general terms, Chinese law begins with the Constitution which is the highest source of legal obligation. There then are laws promulgated by the National People's Congress Standing Committee, administrative rules and regulations formulated by the State Council (which is

China's Central Government[1]) and regulatory documents promulgated by individual ministries or departments (such as MOFCOM). It is normal for these types of law to be expressed at a level of generality that then must be applied and implemented in specific contexts.

17. That process occurs through decisions, notices, official minutes of meetings issued by the State Council, Government Ministries, and the like, that also have binding authority within their scope. Many official requirements are also transmitted through communications that may consist of department documents or oral directions, even including telephone calls. It is not the form of communication that creates its binding character, but the source and authority of the party giving the direction. Regardless of form, to the extent that these directions come from people in superior authority they are no less binding and obligatory on subordinates and the companies than any other type of "law". This is a long-standing system in China as a way of thinking and acting that still exists in China even during its on-going transition to a more market-based economic system.

B. MOFCOM's Regulatory Role

18. MOFCOM is a component of the State Council and is the highest level of Chinese government administrative authority that regulates foreign and domestic trade. It has the authority to draft and implement trade related laws, regulations, policies and directives.[2] It may also issue its

1. "The State Council is the Central Government of the People's Republic of China and is the executive body of the highest organ of State power." Constitution of People's Republic of China, art. 85.

2. Such directives may appear in various forms of official documents issued by Chinese government departments such as

own regulations, rules, measures or instructions on trade issues, which it retains the full authority to interpret and apply, either directly or through delegation.

19. Most importantly, MOFCOM's interpretation of its own regulations and policies carries decisive weight under Chinese law.

20. As the State regulator of trade, MOFCOM may delegate some of its own administrative functions and authority to entities it oversees and manages. As set forth below, in this case it has delegated such administrative functions and authority to the Chamber. Thus, the Chamber in carrying out these delegated functions, acts in an official capacity.

C. China's Export Regulatory Reform and Policy of Coordinating Export to Advance National Interest

21. China's economic system has been developed through two stages, the stage of a planned economy and the stage of transition into a socialist market economy, which started in 1978 and which transition was formally announced in 1993. In the planned economy era (1949-1978), the Chinese government had a monopoly on foreign trade business in which MOFTEC had centralized control of foreign trade and allowed only designated specialized state-owned import and export companies to engage in foreign trade in accordance with mandatory State trade plans.

"Decision," "Notice," "Reply," and "Meeting Minutes." Official Documents Handling Measures of the State Administration, art. 9. They carry legal authority under Chinese law. *Id.*, art. 2 (the official documents (including telegraph) of the administrations are instruments with legal validity and standard format formed in the administrative process of the administrations, are important tools for administration by law and public functions.)

22. At the time there were eight main specialized import and export companies responsible for foreign trade in eight corresponding consortiums of industries: chemical industry, food stuffs, metal and minerals, textiles, native products and animal by-products, machinery and electronic products, light industries and equipment. Each designated specialized import and export company was a part of MOFTEC. The leaders of specialized companies were MOFTEC officials—they were appointed by MOFTEC, had corresponding government official rank and their personnel files were kept by the government. Profit and loss was calculated at the national level; there was no individual corporate accountability for profit and loss.

23. As explained in a seminal speech by then MOFTEC Minister Li Lanqing[3] at the Working Conference of National Economic System Reform, as China commenced to reform its political and economic systems and to open its doors and domestic markets to the outside in the mid-1980s, the government gradually released its central planning and direct control of individual companies' business activities. Instead, it began to rely on economic, legal and political measures, and adopted administrative means to control and supervise foreign trade on a macro-level to achieve national policy objectives.[4]

24. After decentralization and a relaxation of centralized controls, many Chinese companies had begun to engage in aggressive forms of competition without a

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3. Mr. Li served as Vice Minister of MOFTEC in 1986-1990, Minister of MOFTEC in 1990-1993, and Vice Premier of State Council in charge of foreign trade in 1993-2003.

4. Li Lanqing, *Problems of the Reform of 1988 Foreign Trade Regime*, published in Research of Macro Economy (1987), p.30.

great deal of careful planning or an appreciation of the consequences of their activities over the longer term. These companies ignored China's strong national interest in maintaining the long term stability and profitability of Chinese industries, and instead had exported at hugely discounted prices in a manner inconsistent with these national policy objectives.[5]

25. As observed by Minister Li, the foreign trade did not operate successfully when the government had centralized control, but it became chaotic when the government decentralized control.[6] At a national policy level China did not consider aggressive competition acceptable in the national interest and it therefore put in place new administrative controls to make sure that companies did not act without regard to broader state interests as they began to operate privately.

26. In implementing these controls, because government was no longer directly controlling individual companies' activities, addressing these issues necessarily required the government to delegate its regulatory functions to entities that could coordinate and regulate market competition for the purpose of advancing the national interest in ensuring that competition was orderly and conducted in a manner so as to assure industries were not exposed to foreign trade sanctions, and, in addition, earned economically appropriate returns consistent with state objectives to become a successful industrial nation on a global basis.

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5. *Id.*

6. *Id.*

27. The then MOFTEC Minister Wu Yi[7] summarized the situation the Chinese government was grappling with as follows, in a speech given in 1994:

> As import and export operation continue to open, more and more companies will engage in import and export trade. In particular after our country "reinstates its GATT membership," in the future the number of import and export commodities subject to the State's direct regulation will further decrease. However, our country's socialist market economy currently is still in a nascent stage. Many economic activities are not standardized. Some enterprises after their operational discretion has expanded have not formed their own mechanism enabling self-determination operation, the accountability for their profits or losses, self-discipline and self-development. The phenomenon of blind competition among domestic companies and disruption of market order is still notable in certain time periods.
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> For many years, this problem has needed urgent resolution but is not well settled yet. It has seriously affected the healthy development of our country's export trade and caused direct economic losses to the country. ...Therefore, we need to reform the chambers and make them

7. Madam Wu served as the Minister of MOFTEC in 1993-1998, Commissioner of State Council (Equivalent to Vice Premier of State Council) in 1998-2002, and Vice Premier of State Council in 2003-2008.

> to have the ability to carry out the heavy duty of coordination, guidance, consultation, and service ... In foreign trade operations, we need to greatly strengthen and perfect import and export coordination and service mechanisms, including strengthening and promoting the functions of Import and Export Chambers and other intermediaries. Certain government functions will be gradually reduced and be transferred to these Chambers.[8]

28. As noted above, since China's transition from the planned economy and decentralization of control on the right to conduct foreign trade, the Chinese government has always been concerned with maintaining "market order," which in its view would facilitate maintaining and promoting its national interest in developing successful and profitable national industries. The Chinese government is concerned that "excessive competition" or "malignant competition" engaged by Chinese companies against each other would place an entire Chinese industry's profitability and sustainability at risk and in the context of foreign trade would divert profit away from China.[9]

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8. *Minister Wu Yi's Comments on the Reform of Import and Export Chambers of Commerce,* Xu Guomin, Machinery Electronic Products Market (1994) Issue 10. Speeches by government officials, such as Minister Li and Minister Wu occupy a particular place in Chinese legislative and regulatory policy-making. Such speeches, on major topics of government policy, are intended to provide broad direction to other government officials and to the public and frequently serve as the basis for more specific legislation on the topic at issue.

9. *See, e.g.,* Owen, Sun and Zheng, *China's Competition Policy Reforms: The Anti-Monopoly Law and Beyond,* 75 Antitrust L.J.

29. To address these concerns and to advance the national interest of developing successful domestic industries and ensuring overall national profitability, the Chinese government formulated an important national policy which requires Chinese exporting companies to "unite and act in unison in foreign trade."[10] This policy was an important objective of China's export trade reform and was stated in official directives, specifically, e.g.:

(1) Li Lanqing, the then minister of MOFTEC, stated in his speech at the Working Conference of National Economic System Reform[11]: "In consideration of the above major issues, the goals and direction of the reform are relatively clear. To reform foreign trade system is to implement individual accountability of profits and losses, release the control of [foreign trade] operation, strengthen regulation, unite in foreign trade and further develop foreign trade."[12] A main task in the 1988 foreign trade system reform was "to improve the administration of foreign trade and to implement the policy to unite and act in unison in foreign trade."[13] The establishment of import

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231, 249 (2008). *See also supra* note 8, *Minister Wu Yi's Comments on the Reform of Import and Export Chambers of Commerce,* Xu Guomin, Machinery Electronic Products Market (1994) Issue 10.

10. *See* "The State Council's Decision on Several Matters concerning Further Reforming and Perfecting the Foreign Trade System" issued in 1990, Guo Fa [1990] No. 70.

11. *See supra* note 4, p.31.

12. *See supra* note 4. p.31.

13. *See supra* note 4, p.36.

and export chambers of commerce was one of the specific measures to implement this task.[14]

(2) The "Provisions on Strengthening the Coordination and Regulation of Export Commodities" issued by MOFTEC in 1991 states that "strengthening the coordination and regulation of export commodities aims to implement the policy of rectifying and improving [export] and furthering reform policy, to put into full play major export channels, motivate various foreign trade companies, to unite and act in unison in foreign trade, and to build a healthy foreign trade operation order so as to expand export, enhance economic efficiency and safeguard the nation's overall interest."[15] The Provisions authorized the designated foreign trade companies and Import and Export Chambers to conduct coordination and regulation and to implement the policy of acting in unity in foreign trade.

(3) "The State Council's Decision on Several Matters concerning Further Reforming and Perfecting the Foreign Trade System" issued in 1990, provides that one major task of carrying out further reform is to "improve export operation, strengthen coordination and regulation, and to unite and act in unison in foreign trade."[16]

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14. *Id.*

15. Provisions on Strengthening the Coordination of Export Commodities, MOFTEC, 1991, para. 1.

16. Decision on Several Matters concerning Further Reforming and Perfecting the Foreign Trade System, State

30. In sum, the clear policy of China during the past decades, and continuing until today is that there should be private enterprise and competition among such enterprises. However, that competition should be carried out with regard to the broader national interest of China to avoid "excessive" or "malignant competition" that can disrupt "market order," thereby threatening the profitability and sustainability of Chinese domestic industry. To that end, in order to avoid this threat, Chinese companies are required to unite and act in unison in foreign trade against foreign competition.

31. It is in that sense that the entire economic system of China is designated not just as a "market economy" but as a "*socialist* market economy." Under this political and economic backdrop and to implement this export policy, the Import and Export Chambers were established to bridge the gap and to serve as government delegates in

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Council, 1990, Guo Fa [1990] No.70 ("...MOFTEC shall make all specialized general corporations and the import and export chambers of commerce continue to play their roles, strengthen the coordination and regulation of import and export commodities, maintain the normal operation order of foreign trade, and act in unison and uniformly in foreign trade.... Various foreign trade companies should follow the unified coordination and regulation. MOFTEC and its authorized units are authorized to prescribe necessary punishment against violators [of coordination and regulation]. The specialized general corporations should make their own operational decisions with accountability for their own losses and profits. MOFTEC is to take the lead to procedurally establish industries' import and export group corporations and act in unison and uniformly in foreign trade.") Here, the "specialized general corporations" refers to the designated foreign trade companies designated to conduct foreign trade.

regulating foreign trade.[17] As set forth below, Import and Export Chambers generally, and the Chamber regulating vitamin C in particular, were assigned certain government functions by MOFTEC and were required to coordinate and regulate exports and implement the mandatory industry self-discipline mechanism among export enterprises.

D. The Formation of Import and Export Chambers and Their "Coordination" Function

32. The Chamber was one of the national Import and Export Chambers established by the government in an effort to reform its foreign trade regime for the purpose of transforming from a planned economy to a "socialist market economy." The responsibility and power to control import and export business was transferred to the Import and Export Chambers from the specifically designated state-owned national import and export entities which had been entrusted with the exclusive right to conduct import and export business. These chambers were delegated to regulate and coordinate the import and export of the major consortiums of national industries: medicine and health products; food stuffs, native products and animal by-products; light industries; metal, minerals, and chemical products; machinery and electronic products; and textiles. Specifically, the Chamber was given the authority by the Chinese government to coordinate and regulate the import and export of medicine and health products, including vitamin C products.

33. At their formation, the Import and Export Chambers were staffed with personnel transferred

17. *See supra* note 4.

directly from the government, and they were delegated responsibility to perform certain governmental regulatory functions. For certain important trade issues, they were instructed to establish subcommittees which were directed to coordinate "on a basis consistent with common interests."[18]

34. Thus, the State Council's 1994 Decision on Further Deepening the Reform of Foreign Trade System provide ten specific areas of responsibility for these chambers, most of which are governmental and some of which are private in nature: (1) maintaining import and export operational order and protecting member companies' interests; (2) responding to foreign anti-dumping charges; (3) providing member companies with information and advisory services; (4) mediating trade disputes among members; (5) reflecting enterprises' requests and opinions to the government and offering proposals for policies formulated by the government; (6) supervising and directing member companies to operate under the laws; (7) participating in the organization of the quota bidding for the import and export commodities as authorized by competent governmental authorities; (8) participating in the organization of export fair and foreign exhibitions; (9) conducting external business exchange and communication as well as market research; (10) recommending to governmental law enforcement authorities to take measures to punish enterprises in violation of the coordination regulations or punishing violators directly in accordance with industry-wide agreements. The functions described in the above (1),

18. *See supra* note 4, p.36.

(2), (6), (7) and (10) were regulatory functions previously performed by MOFTEC which the Import and Export Chambers were directed to perform in an official capacity on its behalf.

35. As further evidence of the Import and Export Chambers' governmental nature and their role in the regulatory regime, MOFTEC effectively appoints the candidates for the senior positions of these chambers, and verifies and approves these chambers' authorized number of personnel and the total amount of their salaries.[19] MOFCOM has the authority to "approve the establishment and dismissal of the Import and Export Chambers of Commerce and subcommittees, and regulate them accordingly."[20]

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19. MOFTEC's Notice Regarding Printing and Distribution of Several Regulations for Personnel Management of Chambers of Commerce for Importers and Exporters (September 23, 1994). Historically, personnel of chambers of commerce were actually transferred from the state organs and state-owned foreign trade companies, which were the government instrument to control foreign trade. During their terms in the chambers, some government officials also held joint positions in either state organs or in state-owned foreign trade companies. For example, the 1991 Minutes of the Meeting with Import and Export Chambers of Commerce issued by the General Office of MOFTEC provides: "To continue to strengthen the leader team of chambers of commerce, chambers' personnel assigned from the foreign trade companies should rotate. This procedure is currently necessary and effective and the length of the rotation period could be between two years and four years."

20. *See supra* note 4, pp. 36-37.

E. The Differing Nature of Chinese Import and Export Chambers

36. Plaintiffs' expert Professor James V. Feinerman has suggested that the conduct alleged in Plaintiffs' Complaint was not compelled as a matter of Chinese law because the fact that "the defendants are members of a social organization that requires government approval for its establishment does not, by itself, mean that the government of China required their alleged conduct."[21] To reach this conclusion, Professor Feinerman primarily relies on China's Regulations on the Registration and Management of Social Organizations[22] which required all civil organizations to seek prior approval from and register with relevant government agencies prior to their establishment.[23]

37. This analysis by Professor Feinerman is incorrect because it does not recognize that there are different kinds of "social organizations" under Chinese law with different attributes. Under Chinese law, "social organization" is a broad legal term as it stands apart from an individual, an enterprise, an institution and a government office. The Regulations on the Registration and Management of Social Organizations cited by Professor Feinerman set forth the basic requirements to form all types of social organizations; it does not speak to the nature of an entity—whether it is a private organization or a government

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21. Feinerman Decl., ¶12.

22. Exhibit C to Feinerman Decl.

23. Feinerman Decl., ¶¶6-10.

delegate. By analogy, Professor Feinerman's conclusion is the equivalent of saying an apple cannot be proved to be an apple because it is a fruit, which exists in tens of thousands of types.

38. During the Chinese economic system reform, a larger number of organizations were set up and called themselves "associations" or "chambers of commerce."[24] Currently in China, social organizations such as "trade associations" or "chambers of commerce" subject to Regulations on the Registration and Management of Social Organizations can be classified into two major categories: (1) those that have been assigned certain regulatory or administrative functions, such as the China Council for the Promotion of International Trade, to which I myself am a consultant, as well as the national Import and Export Chambers mentioned above, and (2) those trade associations which are purely voluntary, having no regulatory function, and having full discretion as to the institutional size and the choice of staff. The latter are private civil organizations. The Chamber that is responsible for vitamin C belongs to the first category as it assumed regulatory functions authorized by the government since its inception.

39. The Chamber is a "foreign trade and economic social organization established with coordination and industry regulation functions" as set forth in the 1991 Measures for Administration over Foreign Trade and Economic Social Organizations ("1991 Measures"). Trade associations are

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24. However, the title of "China Chamber of Commerce of Import and Export" remains in the exclusive use of the few designated Chambers that were established pursuant to the directives of the Chinese government.

"foreign trade and economic social organizations" but not all have the "coordination and industry regulation functions." MOFCOM is "directly responsible for the daily management of social organizations established with coordination and industry regulation functions."[25] By contrast, MOFCOM does not directly supervise "social organizations" that do not have coordination and industry regulation functions.[26] As the government entity authorized to interpret the 1991 Measures, MOFCOM is charged with determining if an organization is a foreign trade and economic social organization established with coordination and industry regulation functions.[27] Most important, we should understand that the Import and Export Chambers were established pursuant to the directives of MOFCOM and have been delegated to perform specific regulatory governmental functions.

40. The national Import and Export Chambers are also vastly different from typical chambers of commerce in western countries as I understand them. The Chinese Import and Export Chambers are established by the government in a "from top to bottom" fashion and have been delegated with regulatory functions since their formation. With respect to key industries and export, membership in them is mandatory to ensure the implementation of Chinese government policy and regulation. Leaders

25. Measures for Administration over Foreign Trade and Economic Social Organizations, MOFTEC, promulgated on February 26, 1991, art. 17. "The authority of interpreting this regulation is with MOFTEC," art. 25.

26. *Cf. Id.*, art. 18.

27. *Id.*, art. 25.

of Chinese Import and Export Chambers are either appointed by the government, or selected under the supervision of the government. By contrast, chambers of commerce in western countries are usually initiated by private companies and memberships are voluntary. These western countries chambers of commerce are independent of government and do not assume governmental functions. Their officers are freely elected by member companies without government involvement or directive.

F. The Coordination Authority of the Import and Export Chambers

41. As explained above, the function of Import and Export Chambers that have regulatory authority is to further the underlying economic policies and interests of the State by ensuring coordination and orderly competition of foreign trade enterprises. Compliance with government policy, and thus with the requirements of the Chamber designed to implement and further such policies is mandatory.

42. To ensure that China's national policy was properly implemented, MOFTEC required companies engaging in foreign trade to follow the Import and Export Chambers' regulatory directions. "The Chambers of Commerce and their subcommittees shall be comprised of enterprises that have the right to conduct foreign trade business. The enterprises having the right to conduct the foreign trade business of grain and oil, native products, animal by-products, textile, costume, light industry products, art-crafts, metals, minerals, chemicals, and machinery and electronic products must join relevant chambers of commerce and subcommittees; otherwise they shall not be allowed to engage in the manufacture or distribution of

such products. The Chambers of Commerce have the right to coordinate and advise on market, customer, price, et al. ... For enterprises that do not follow the coordination, their [chamber] memberships will be suspended and their right to operate [foreign trade business] will be temporarily revoked by MOFTEC. For serious violations, MOFTEC will revoke their membership and operation right."[28]

43. "All foreign trade enterprises must be subject to the unified coordination and regulation, and MOFTEC and its authorized authorities shall take necessary disciplinary actions against any enterprise that violate such coordination and regulation."[29] Furthermore, "all relevant departments of the Ministry shall continue to support the Chambers of Commerce with their coordination and service, so that the Chambers can assist the Ministry with macro-administration."[30]

44. In 1994, the then MOFTEC Minister Wu Yi instructed Import and Export Chambers on their regulatory coordination functions as follows:

> Coordination means that all Chambers of Commerce must establish industry awareness, have the 'big trade' ideology, and coordinate the import and export transactions of members from the perspective of safeguarding the interests of

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28. *See supra* note 4 at p.36.

29. Decision on Matters concerning Further Reforming and Perfecting the Foreign Trade System, State Council, Guofa [1990] No. 70, 1990.

30. Minutes of Meeting with Import and Export Chambers of Commerce, General Office of MOFTEC, 1991.

> the members and the normal order of China's foreign trade. Enterprises having the right to operate foreign trade, including foreign-invested enterprises, shall be subject to the coordination of the Import and Export Chambers of Commerce. Coordination is a mandatory task of the chambers of commerce. With respect to the individual enterprise in violation of relevant government regulations and the industry-wide agreement, causing great losses to the country and other companies, the Chambers of Commerce shall punish these enterprises in accordance with the industry-wide agreement. Additionally, the Chambers of Commerce may propose to the competent authority to sanction such enterprises. In the future, to facilitate the coordination of the chambers of commerce, MOFTEC will set up several examples by seriously punishing enterprises which do not follow the coordination process.[31]

45. In 1994, the General Administration of Customs promulgated Interim Measures of the China Customs on Appraisal of Prices of Commodities to Be Exported and its Implementing Rules. These Interim Measures explicitly provide that when the Customs appraised the export sales price on an export declaration, it would first refer to "the export price coordinated by China Import and Export Chambers of Commerce..."[32] If the export price on the

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31. *See supra* note 8.

32. The Interim Measures of the China Customs on Appraisal of Prices of Commodities to be Exported and its Implementing Rules, General Administration of Customs, 1994, art.4.

declaration was lower than the chambers' coordinated price, "the Customs shall report the relevant information to China's import and export chambers of commerce and national authorities of foreign exchange administration."[33] "Specific punishment measures shall be decided by the import and export chambers of commerce and national authorities of foreign exchange administration."[34] It is explicit that, the export price coordinated by the chambers be followed by each exporter, which is ensured by the price review of the Customs and the Import and Export Chambers' power to impose punishment on violations.

46. As will be set forth in greater detail and supportive citation below, the general obligations described above apply to the exporters of vitamin C. Thus, directions from the Chamber in coordinating and regulating the medicine and health product industry are to be followed by its members because the Chamber is an authorized industry regulator with authority delegated by the Chinese government. The four Chinese manufacturer Defendants are required to be members of the Chamber and must comply with directions from the Chamber.[35] Defendants who fail to follow the Chamber's regulatory directions are subject to export ban and other severe penalties.

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33. *Id.*

34. *Id.*

35. The 1997 MOFTEC and SDA Notice Relating to Strengthening the Administration of Vitamin C Production and Export ("1997 MOFTEC and SDA Notice") provides all companies qualified to operate vitamin C export business must join the Vitamin C Subcommittee.

G. The Regulatory Role of Chamber Under the Licensing and Quota Regime

47. The export of vitamin C products has been subject to active regulation by the Chinese government since at least 1990 under the export quota and export licensing system and the Chamber has been given the authority and responsibility for the regulation and coordination of vitamin C export.[36] This regulation has continuously been in effect in various forms and mechanisms, adopted as a matter of national policy with respect to the economic activities of certain key industries. Thus, with respect to vitamin C, in 1990, vitamin C was classified as a "Category II" export product, the export of which was conducted in accordance with a government-mandated "guiding export plan" and by designated and licensed foreign trade companies. "Category II" export products were those that were subject to "limited international market demand capacity, quota restriction, fierce competition, and price sensitivity."[37]

48. The Chamber was explicitly provided with the "coordination and regulation" functions to administer "Category II" exports, including vitamin C. With respect to the "Category II" exports, "the Import and Export Chambers of commerce shall coordinate and regulate the market, customers, price and other aspects in accordance with the product's specific circumstances, in particular organize the chamber members to fix a nationally uniform

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36. *See* Notification of Adjusting Export Good Classification Catalogue and Strengthening Regulation of Export Goods Marketing and Sales, MOFTEC (January 23, 1990).

37. *See id.*

export price plan regularly or at any time needed, and be in charge of supervision and implementation."[38] "The relevant Import and Export Chambers of Commerce shall form respective sub-committees or coordination management teams to be responsible for coordinating and regulating [Category II exports]."[39]

49. Vitamin C exports have been subject to this State-mandated "coordination" process involving the participation of industry members. It is not a voluntary process. The 1992 Interim Regulation of Export Products subjected 38 types of products including vitamin C to the planned quota administration. According to the 1992 Interim regulation, the 38 kinds of goods were classified as "Category I" exports, which are the "resource products of large export amount and concerning the livelihood of the nation and the people, and traditional export products of large export amount and of great importance to China's export." The 1992 Interim Regulation again prescribed the mandatory "coordination" process: "Export goods subject to coordination shall be uniformly regulated and coordinated by the respective Import and Export Chambers of Commerce. Enterprises engaged in producing and selling goods subject to export quota license system must join relevant Import and Export Chambers of Commerce. The specific coordination and regulation method shall be strictly implemented after discussion and approval by the member meetings."[40]

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38. *See id.*

39. *See id.*

40. Interim Regulation of Export Goods, MOFTEC, MOFTEC Order No.4 (December 29, 1992).

50. The implementation of this mandatory "coordination" process was ensured by the regulations under the quota and licensing system. The 1995 MOFTEC Regulations on the Allocation of Export Quotas similarly provides that one of the prerequisites for obtaining an allocation of export quotas is "to join the relevant Import and Export Chamber of Commerce and be voluntarily subject to the coordination." Additionally, the 1996 Provisions on the Regulation of Licenses provided that when the price in the export contract is lower than the coordinated price set by the relevant Import and Export Chamber of Commerce, the export licensing authority shall refuse to issue the export license.

51. The Chinese Government specifically focused on vitamin C and the need to ensure that its national policy directives were achieved at around this same period of time. At the end of 1995, three Vice Premiers instructed MOFTEC to address the problems in the vitamin C industry. Following these instructions, in 1996 MOFTEC held an emergency meeting with its local provincial offices, main exporters and manufacturers, the Chamber and officials from State Drug Administration ("SDA")[41] to "strengthen the regulation of vitamin C export, protect the hard-earned international market share, and promote the healthy development of [vitamin C] export."[42] After

41. SDA was at that time the highest level of Chinese government administrative authority directly under the State Council that regulated food and pharmaceutical products; as of March 2008, SDA has become part of the Ministry of Public Health.

42. Emergency Notice of Holding Vitamin C Export Work Meeting, Foreign Trade Regulation Department of MOFTEC, January 31, 1996.

the meeting, MOFTEC then sent a report to the State Council, identifying several problems, including Chinese vitamin C's excessive reliance on export, low export prices and too many competing exporting channels.[43] MOFTEC observed, among other things, that Chinese vitamin C manufacturers built an overcapacity in response to the high profit and strong demand in the international market in the earlier years, and the foreign manufacturers attempted to reclaim market share by lowering prices.[44] MOFTEC concluded: "price competition in the current vitamin C export is mainly a competition between Chinese vitamin C manufacturers and international conglomerates; the competition among Chinese vitamin C manufacturers is only secondary."[45] Low price competition and export disorder were "serious hidden dangers to [China's] vitamin C export's further healthy development."[46]

H. The Establishment of the Vitamin C Subcommittee

52. This Court's November 6, 2008 Memorandum and Order questioned whether the Vitamin C Subcommittee was established at the request of private parties or

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43. MOFTEC's Report to State Council Concerning Current Vitamin C Export Issues and Suggestions for Solutions, Wu Yi [1996] Waijingmao Guanfa No. 185, p.3.

44. *Id.*

45. *Id.*

46. *Id.* at p 5. Consequently, MOFTEC proposed draconian measures including a ban on any new vitamin C manufacturing facility or expansion in the next three years, a production restriction on existing vitamin C manufacturers, control on total export amount and adjusting existing quota allocation method to promote scaled export.

defendants in this case.[47] It was not. In 1997, MOFTEC and SDA jointly issued a regulation and required the Chamber to establish the Vitamin C Subcommittee.[48] As MOFTEC and SDA noted at that time, "[Chinese] vitamin C export encounter[ed] intense competition and challenges from the international market."[49] "In order to rectify the operational order and optimize the operational team of vitamin C export, realize the scale-operation on export, improve the competitiveness of [Chinese] vitamin C products in the international market, promote the healthy development of vitamin C export and maintain the interest of [China] and enterprises," MOFTEC and SDA announced several measures including requiring the Chamber to establish the Vitamin C Subcommittee.[50]

53. The coordination and regulatory functions of the Vitamin C Subcommittee were explicity mandated by MOFTEC and SDA: "The main responsibilities of this [Vitamin C Subcommittee] are to coordinate with respect to vitamin C export market, price and customers..."[51] "All enterprise qualified to operate vitamin C export shall participate in [the Vitamin C Subcommittee.]"[52]

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47. November 6, 2008 Court Memorandum and Order, at p.30.

48. 1997 Notice Relating to Strengthening the Administration of Vitamin C Production and Export (1997), MOFTEC Guan Fa No. 664, issued on November 27, 1997, art. 6.

49. *Id.*, introductory paragraph.

50. *Id.*, para. 6.

51. *Id.*, para. 6.

52. *Id.*

54. MOFTEC and SDA set forth a general framework for this "coordination" process, involving participation by industry members, charging the Chamber with the responsibility of implementing the specific regulatory coordination method to be effectuated via a "subcommittee" related to some specific products, i.e. vitamin C products, which are organized by the Chamber and operating under its active supervision and direction: "[The Vitamin C Subcommittee] shall timely organize meetings for the major vitamin C export enterprises according to the domestic and international market development, to conduct studies on market strategies, timely formulate and adjust export coordination price, which the vitamin C enterprises must strictly implement in accordance with."[53] The licensing agencies authorized by MOFTEC were required to rigorously examine enterprises' qualifications to export Vitamin C products, the exporting enterprises' export contracts and issue export license in accordance with vitamin C's coordinated export price and quota quantity. Violations were subject to serious punishment.[54]

55. The requirement that the Chamber and the Subcommittee be responsible for "coordinating the China vitamin C export market, price and customers" was reiterated as one of the functions for the Vitamin C Subcommittee when MOFTEC approved the establishment

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53. *Id.*, para. 7.

54. *Id.*, paras. 9 and 10. Sanctions will be imposed on export enterprises in violation of the relevant provisions of this notice. Once verified, the sanctions could range from the reduction of export quotas to the cancellation of export qualifications, according to with the seriousness of the violation.

of the Vitamin C Subcommittee.[55] This authority to "coordinate and administrate market, price, customer and operation order of vitamin C export" was subsequently incorporated in the Vitamin C Subcommittee's Charter.[56]

56. This Court's November 6, 2008 Memorandum and Order further states that "One area that appears to be ripe for discovery is the degree to which defendants coordinated pricing before and after December 2001. If the apparatus and mandate for price-fixing was in place as of 1991 (when the Chamber was formed) or 1997 (when the Vitamin C Sub-Committee was formed), but no price-fixing occurred until market power was achieved, plaintiffs would have a stronger argument that defendants' actions were voluntary." The answer to this question is that, as set forth above, vitamin C exports have been subject to the mandatory coordination and regulation since as early as 1990 and the vitamin C manufacturers' participation in the coordination process was mandatory because their membership in the Vitamin C Subcommittee and compliance with its directives was mandatory on pain of losing the right to export for non-compliance.

57. The events alleged in the Complaint in this case flow not from voluntary activity, but rather are simply a continuation of the mandatory governmental regulation

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55. MOFTEC Approval for Establishing VC Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers & Exporters (March 23, 1998).

56. Charter of Vitamin C Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers & Exporters, dated October 11, 1997.

that I have described and which was in place for nearly 10 years before. Thus, the first alleged conspiracy meeting that the Complaint cites was a meeting convened by the Chamber at MOFTEC's direction in response to alerts from the Chinese government that its industries were running the risk of dumping.[57] Thereafter, and continuing throughout the period during which the Defendants are accused of conspiring, meetings were convened as appropriate by the Chamber and the members of the Vitamin C Subcommittee for the purpose of implementing the national competition policy of maintain a profitable vitamin C industry in China through coordination of price and output. Thus, both before and after the commencement of the period in which Defendants are alleged to have acted illegally under U.S. antitrust law, the vitamin C manufacturers were required to act in accordance with the same policy and to do so by participating in the activities of the Chamber's Vitamin C Sub-committee.

I. The Chamber's Regulatory Role in the Post-2001 Verification and Chop System

58. The Chamber's government-delegated authority in "coordination and industry regulation" was extended following China's accession into the WTO in December 2001. In 2002, as delegated jointly by MOFCOM and the General Administration of Customs, the Chamber implemented a "verification and chop" system to replace the previous export quota restriction for the purpose of continuing the Chambers' "coordination of prices and

57. Minutes of Meeting by Officials of Vitamin C Manufacturers, JJPC 0043070.

industry self-regulation" pursuant to basic Chinese national policy requiring the continued regulation and supervision of certain key industries.[58]

59. Vitamin C products are one out of 36 types of products which are particularly controlled by the State and subject to the verification and chop system. Exporting companies are required to hold memberships in the Vitamin C Subcommittee and comply with the industry coordination enforced by the Chamber and the Vitamin C Subcommittee. The Chamber and the Vitamin C Subcommittee acted within their role and authority granted by MOFCOM when engaging industry members in meetings to discuss the vitamin C market, price and extent of production.[59]

60. Details of the "verification and chop" procedure are provided in the 2003 Announcement of MOFCOM and the General Administration of Customs (Notice No. 36).[60] For those commodities that have been subject to "verification and chop," before declaring to the Customs, the export company shall send the export contract, both the original and the copy thereof, to the relevant Import and Export Chambers for review and approval. The relevant chamber shall then review and approve the proposed export contract submitted by exporting companies based on the industry-wide coordination it

58. *See* MOFTEC and Customs Notice of Adjustment of the Catalogues of Export Products Subject to Price Review by the Customs, MAO FA [2002] No. 187 (March 29, 2002), art. 4.

59. *Id.*

60. 2003 No. 36 Public Notice Issued by MOFCOM and General Administration of Customs of the PRC, dated November 29, 2003.

has supervised.[61] Upon approval, the Import and Export Chamber is required to provide a "Chop Form" and the export contract to the exporting company after stamping an anti-fake seal for verification on the designated place of the "Chop Form," as well as on the final price and quantity indicated on the export contract. The export company is required to present the original copy of the stamped "Chop Form" and the export contract to the Customs for export declaration. The Chamber's legal authority to review and place its "chop" of approval on a manufacturer's export contract is one of many indicia of the governmental authority that MOFCOM delegated to the Chamber to regulate the Vitamin C industry.

61. It is also important to understand that the implementation of the verification and chop mechanism, following China's accession to the WTO, did not in any way change the level of control that the government maintained over the vitamin C industry. Just as it was before the implementation of verification and chop, the Vitamin C Subcommittee remained a government-authorized coordination organization, within the Chamber, which was set up in accordance with national regulations and policies and was delegated with authority to regulate export on behalf of the government. The price-coordinating meetings and industry-wide agreements regarding production cutbacks, export quotas and other measures that were facilitated by the Vitamin C Subcommittee continued to serve to advance national interests I have described above, and to maintain the proper export order with which the government was concerned.

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61. *Id.*

62. There has been at all times a national economic policy requiring coordination within key industrial segments, such as vitamin C, in order to avoid harmful forms of price competition that were considered antithetical to the national interest. Acting through the Chamber, the vitamin C manufacturers were obligated to carry out that policy under the auspices of the Chamber by coordination of price and output. This was true in the period after 2001 as well as in the years before, as I have also described above. The mechanism through which this was to be accomplished was not the key point. Rather, the essential point was that the manufacturers were required to act in a coordinated fashion to further national Chinese economic policy.

63. Measured adopted after 2001, such as the verification and chop system, price coordination and production and supply restraints retain the same mandatory nature as the export restraint measures implemented since 1990. Enterprises' participation of export coordination led by the Chamber, including discussion of the market, price, output and export volume under the direction of the Chamber, and the making of and compliance with the coordinated measures are all required practice since 1990. Defendants' right to export will be forfeited if they refuse to participate in the coordination or fail to follow a coordinated measure.

J. The Mandatory "Coordination" Mechanism During the Alleged Conspiracy Period

64. This Court's November 6, 2008 Memorandum and Order correctly observed that the word "coordination" has a particular meaning in the context of China's government

and economic policy.[62] In the context of Chinese economic regulation and policy, the term "coordination" entails a regulatory process, conducted by the Chamber under the direction and authorization of MOFCOM, which involves mandatory discussion among industry members in order to find appropriate regulatory measures to advance China's national interests and to reduce foreign trade disputes.

65. As set forth in analysis above, the Chamber's coordination function was granted by MOFCOM pursuant to Chinese laws and policy. The coordination and regulation conducted by Chambers is an important regulatory means in the country's foreign trade system as China is transforming from a central, direct administrative system to a socialist market economy where the government is expected to monitor and control individual companies' market activities on a policy level, delegating and assigning the specifics of regulation downward. The purpose of coordination is to have domestic companies compete in the international market as a unity, to build healthy foreign trade operational order, expand China's export, and advance China's collective interest.[63] The implementation of the mandatory process is assured by the regulatory authority of Chambers and MOFCOM.

66. As this Court's November 6, 2008 Memorandum and Order also notes, Plaintiffs allege that "the Ministry has not pointed to a single law or regulation compelling

62. November 6, 2008 Memorandum and Order, at p.18, n.7.

63. Rules on Strengthening the Coordination and Regulation of Export Goods, MOFTEC, effective February 22, 1991.

a price or price agreement at issue."[64] But Plaintiffs misunderstand China's export regulatory system. Chinese laws and regulations put in place a mandatory "industry coordination" process for exports of important national interest and the Chinese government entrusted the Chamber to find the most appropriate industry measures through the mandatory regulatory process. That process mandates that industry members discuss market circumstances, pricing and other relevant factors in order to find the most appropriate coordination measure. Once appropriate measures (such as quota, price or volume restriction, or mandated joint activities) are adopted by the Chamber, such measures become mandatory as a matter of Chinese law and regulatory practice. That is a regulatory process mandated by the Chinese government under Chinese laws and regulations, and implemented by the Chamber with authority granted to it by the Chinese government.

67. As this Court's November 6, 2008 Memorandum and Order also notes, Plaintiffs contend that defendants' price agreements are voluntary by citing to documents that contain words such as "agreed by voting" or "reached an agreement."[65] As explained above, the "industry coordination" process is a government mandated regulatory process and is not voluntary in the sense that vitamin C manufacturers were free to ignore it. To the extent certain Defendants may have engaged in discussions of vitamin C market prices or production levels with or without the Chamber's presence, such conduct is

64. November 6, 2008 Memorandum and Order, at p. 17.

65. *Id.*, at pp. 19-20.

part and parcel of the government-mandated "industry coordination." The purpose is to find the appropriate regulatory measures, which the Chamber has been authorized and directed to implement.

68. This Court's November 6, 2008 Memorandum and Order suggests that it is difficult to determine the degree of defendants' independence in making pricing decisions because certain documents seem to indicate that some defendants had their own self-interest in participating in the coordination process.[66] Whether the individual companies' self-interest coincided with the "industry coordination" process does not change the nature of this "industry coordination" – a government mandated regulatory process for the purpose of finding the appropriate industry regulatory measures. MOFCOM and its delegate – the Chamber – are fully authorized to implement and enforce it to make it effective. The penalty for non-compliance is severe – the non-compliant company will lose its right to export.[67]

K. "Industry Self-Discipline" and Government's Concern with Advancing National Interest and Avoiding "Price Wars"

69. Also as noted by this Court's November 6, 2008 Memorandum and Order, Plaintiffs contend that defendants' price agreements are voluntary by citing to documents that contains words such as "industry self-

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66. November 6, 2008 Memorandum and Order, at pp. 22-23.

67. 2003 No. 36 Public Notice by MOFCOM and China General Administration of Customs.

discipline" and "voluntary self-restraint."[68] These words also must be understood within the context of Chinese economic and regulatory policies. They do not entail voluntary actions by Defendants.

70. "Industry self-discipline," is a term that has a widespread and well-understood usage in Chinese industrial policy.[69] As I have noted above, this concept of self-discipline was emphasized by Minister Wu in her speech in 1994. The Import an Export Chambers that were converted from government ministries were assigned important functions to implement the concept, and it was officially sanctioned by the government in 1998.[70] "Self-discipline" means that all industries shall maintain import and export order in accordance with laws, regulations and rules and shall not conduct operation in violation of regulations regardless of national interest. While the coordination was a top-down regulation system led by MOFTEC and implemented by Import and Export Chambers, the industry self-discipline mechanism was a mutual supervision measure among export enterprises required for the implementation of government policy of acting in unison to achieve overall national profit and to develop successful domestic industries.

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68. November 6, 2008 Memorandum and Order, at p. 18.

69. "Industry self-discipline" is the most common English translation of the Chinese, although "industry self-regulation" could also serve as a literal translation.

70. *See* Owen, et al, "Chinese Competition Policy Reforms: The Anti-Monopoly Law and Beyond," 75 Antitrust L.J. 231, 241 (2008) and authority cited.

71. Specifically, because vitamin C is a major export industry, the Chinese government has paid close attention to its regulation to prevent Chinese companies from engaging in competition against each other for the purpose of maximizing their own profits at the expense of the national interest, and that is what is meant by "industry self-discipline" and "voluntary self-restraint."[71] As an example, in a meeting held by Chamber on April 13, 2001, an officer of MOFTEC's Department of Foreign Trade admonished the vitamin C manufacturers and exporters: "Even though VC is not a resource product, it has been strictly regulated since 1997... MOFTEC attaches importance to the establishment and development of the Chamber and requires the Subcommittee to act proactively. Enterprises need to obey the industry agreements and industry rules. When enterprises are maximizing their profits, they also need to consider the interest of the State as a whole."[72]

72. Plaintiffs have relied on website reports to suggest that the Defendants reached "a voluntary agreement on price fixing and production restraints." However, within China's self-discipline context the term "voluntary" refers to the fact that market participants have some limited control over the time, place and manner in which they carry out the regulatory mandate to reach industry-wide agreements to further China's economic policies. In China's regulatory context enterprises are expected to discuss matters among themselves with a view towards reaching a consensus as to how best to go about furthering

71. *See* 1997 MOFTEC and SDA Notice.

72. Deposition Exhibit 173, JJPC0043064.

the required coordination in a manner consistent with "the interest of the State as a whole" and, in doing so, are expected to follow Chinese laws, and regulations under the leadership of the Chambers of Commerce.

73. Similarly, although there are documents indicating that on occasion there were extended discussions, and occasions where agreements were not reached, this does not demonstrate a lack of compulsion or regulation, but rather is inherent in the idea that the parties were mandated to engage in self-discipline to achieve basic policies, but had freedom in deciding the manner in which coordination was to be achieved consistent with national goals.

74. Metaphorically speaking, the industry self-discipline mechanism under the coordination and regulation of Import and Export Chambers in China's foreign trade regulatory regime is like a race competition, having strict rule and a reward and penalty system. Participants (export companies) who comply with the rules will have the right to participate in the competition; otherwise, they will be punished or even disqualified for the race. Therefore, the so-called voluntary self-discipline of Defendants is a mechanism that is engaged in pursuant to a mandated regime of coordinated behavior related to price and output that must be implemented in a manner that furthers China's national economic policy.

75. Properly understood, what the government is compelling is the active participation of the industry in a mandated process which must be obeyed. It is also important to note that in China, having established the broad regulatory framework through regulations, directives and implementing orders are frequently given in an oral fashion. Chinese governmental control is a quite different

process from what takes place in other countries, and the fact that directives are oral, or terms such as "self-discipline" or "voluntary self-restrain" are used does not change the forcefulness or compulsion which attaches to such directives when given in China – especially when such directives are given to companies which themselves have significant government ownership and whose officials receiving such directives are party members and appointees. Importantly in the Chinese regulatory system where companies still have significant state ownership, the national and regional governments play an ongoing role, and top managers and executives generally owe their business positions to political appointment, it is generally unnecessary to use those levers of control. The fact that they exist, and that the enterprises are so closely intertwined with the government, gives force to the regulatory system I describe herein.

76. As reflected in the regulations set forth above and noted by legal scholars, China's industry export self-discipline measures mean the export self-discipline measures implemented by the Import and Export Chambers authorized or entrusted by the government, including restriction on capacity and export volume or adjustment of export price to reduce and mitigate competition, for the purpose of furthering China's national interest and resolving or avoiding trade frictions with other countries. Chinese legislators contemplated that trade associations would play an important role in enhancing the competitiveness of domestic industries. "In particular, the lawmakers want the trade associati... to eliminate 'vicious competition,' or cutthroat price wars."[73]

73. Yong Huang, *Pursuing the Second Best: The History, Momentum, and Remaining Issues of China's Anti-Monopoly Law*, 75 Antitrust L. J. 117, 129 (2008).

77. The concept of industry self-discipline is ingrained in China's economic regulatory framework. The Chinese government requires chambers and trade associations to promote "self-discipline" among competitors to avoid such "price wars" and to promote national interest. Article 56 of the Foreign Trade Law provides that "[t]he relevant associations and chambers of commerce shall abide by laws and administrative rules, provide the members with services related to production, marketing, information, and training in accordance with articles of association, perform the function of coordination and self-discipline...."

78. The concept of self-discipline most recently was re-iterated and reaffirmed by China's newly-enacted Anti-Monopoly Law. Article 11 of the Anti-monopoly Law adopted in August 2008 explicitly requires trade associations to "strengthen industry self-discipline, guide business operators to lawfully compete, safeguard the competition order in the market...."[74]

79. As I have noted previously, part of the concern that arose from the transition to a type of market economy was that companies would price so low that they actually would create a serious risk of anti-dumping actions. In fact, that was the genesis of the November, 2001 meeting. However, as reflected in the documents I have seen and in the MOFCOM website, industry self-discipline was intended

74. Anti-Monopoly Law of the People's Republic of China (promulgated by the Standing Committee of the National People's Congress on August 30, 2007 and effective August 1, 2008), art. 11. *See also,* art. 15 (The Anti-Monopoly Law does not apply to an agreement among business operators "for the purpose of safeguarding the justifiable interests in the foreign trade or foreign economic cooperation")

not merely, or even principally, to address antidumping concerns. Rather, it was to implement the much broader national export policy that has existed for many years and that requires Chinese companies to refrain from engaging in excessive competition to pursue short term self-interest at the consequence of disrupting trade order, and to act in unity in the international market in order to develop profitable and successful national industries.

I. A Verified Government Seal Is Not Required under Chinese Law to Cite to a Law or Regulation

80. As a final point, I would like to explain that Professor Feinerman incorrectly concludes, in his August 15, 2006 Declaration that the regulations attached to MOFCOM's Amicus Curiae Brief are not properly authenticated under Chinese law because they do not bear a verified official chop.[75] For a document to be authenticated in China, Chinese law does not require a verified seal or chop in addition to a proper notarization. These Chinese government regulations are provided by an authorized representative of MOFCOM, which is either the issuer, designated enforcement agency, or the authorized interpreter of these regulations, and therefore are properly authenticated.

Respectfully Submitted,

/s/_____

Professor Shen Sibao

Dated: February 19, 2009

75. *See* Exhibit B to Feinerman Decl.

JUNE 2004 WORK SUMMARY, IMPORT/EXPORT DEPARTMENT, DATED JULY 4, 2004

June 2004 Work Summary
Import/Export Department

2. THIS MONTH'S BASIC SITUATION

Redacted

4) BUSINESS ASSOCIATION MEETING

On June 15th, the VC regulation meeting was held in Shanghai. The six domestic VC manufacturers attended the meeting. President Kong, President Wang, and Wang Qi represented our company at this meeting. At this meeting Weisheng Pharmaceutical Industry re-proposed the agenda for quoting while stopping production, because their production line had problems. Finally, they reached an agreement, in which the 6 domestic VC manufacturers will arrange to suspend production before the end of October. However, with respect to when to start the suspension and how long it lasts, each manufacturer will decide for themselves.

Observing the impact of the meeting to the market, the market price after the meeting started to rise. Until the end of June, the average quotation price stabilized between 5.00-5.50 USD/kg.

There are two main reasons: one is because Weisheng Pharmaceutical Industry actually stopped production at the end of June, the

supply of Chinese VC to international markets has been reduced. Meanwhile, by virtue of the other manufacturers following the plan to stop production over the next few months, a psychological impact has been given to the market although the production has not been suspended yet.

Redacted

Import/Export Company: Wang Qi July 4th, 2004

Cc: President Kong, President Ji, GM Wang

Cc: Liu Yin Zhen, Yu Xiao Zhuan

2002 CHARTER OF THE VITAMIN C SUBCOMMITTEE OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS, APPROVED JUNE 7, 2002

Appendix 2:

CHARTER OF THE VITAMIN C SUBCOMMITTEE OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS

Section One: General Principles

Article One: This Charter has been formulated in accordance with the relevant state laws and regulations and the *Articles of Association for the China Chamber of Commerce of Importers and Exporters of Medicines and Health Products.*

Article Two: The name of this organization is China Chamber of Commerce of Medicines and Health Products Importers and Exporters Vitamin C Subcommittee (hereafter referred to as "the Subcommittee"), and it is registered with the state association administrative authority in accordance with the relevant laws.

Article Three: The Subcommittee is a component of the China Chamber of Commerce of Medicines and Health Products Importers and Exporters (hereafter referred to as "the Chamber of Commerce"), and is a self-disciplinary industry organization jointly established on a voluntary basis by those Chamber of Commerce members which conduct import and export of vitamin C. It does not have a legal person status.

Article Four: The purposes of the Subcommittee are to observe the state laws, regulations and the Articles of Association for the Chamber of Commerce, to coordinate and guide the vitamin C import and export business as well as related activities, to provide consultation and services to its members and relevant governmental departments, to maintain the normal working order of vitamin C import and export operations, to ensure fair competition, to protect the national interest and the legal rights and interests of its members, and to promote the healthy development of the vitamin C import and export trade.

Article Five: The Subcommittee accepts guidance and supervision from the Chamber of Commerce.

Section Two: Functions

Article Six: The Subcommittee shall serve as a liaison between the government and its members, between the domestic and overseas markets, and among the relevant industries.

Article Seven: The Subcommittee shall introduce national economic and trade laws, regulations, guidelines and policies to its members, and shall guide and oversee the operations of its members in accordance with the law.

Article Eight: The Subcommittee shall coordinate and guide vitamin C import and export business activities, promote self-discipline in the industry, maintain the normal order for vitamin C import and export operations, and protect the interests of the state, the industry and its members.

Article Nine: The Subcommittee shall study methods and measures for the expansion of the vitamin C import and export trade, and shall organize discussions of import and export trade strategy and planning. The Subcommittee shall represent the interests of its members, communicate the status, opinions and suggestions of its members to the relevant departments of the government, and make suggestions to the relevant departments of the government in formulation of vitamin C import and export trade policies.

Article Ten: The Subcommittee shall participate in domestic and overseas activities and international exchanges for the promotion of vitamin C import and export, shall establish and develop a cooperative relationship with related domestic and international industrial organizations, and help its members to develop in the international marketplace.

Article Eleven: The Subcommittee shall exchange knowledge and experience in developing vitamin C production, improving commodity quality, improving operations and management, and promoting collaboration between industry and trade; shall collect and organize information regarding the domestic and overseas markets for vitamin C, including clients, production, sales and other relevant information; and shall provide consulting services to its members.

Article Twelve: The Subcommittee shall organize relevant businesses to prepare response to antidumping accusations against vitamin C of our country; shall investigate dumping and unfair competitive activities of foreign products in our country in response to

members' complaint, and submit requests to the relevant governmental departments for measures to be taken in accordance with the industry's requests.

Article Thirteen: The Subcommittee shall implement other duties as authorized by the government or the Chamber of Commerce or as requested by the members and necessitated by industry agreements.

Section Three: Membership

Article Fourteen: The following conditions must be met when submitting an application for membership on the Subcommittee:

(1) Must be a member of China Chamber of Commerce of Medicines and Health Products Importers and Exporters;

(2) Must support this charter;

(3) Must be willing to engage in the vitamin C import and export business and to operate in accordance with the law;

(4) Must indicate an intention to join the Subcommittee.

Article Fifteen: Procedures for joining the Subcommittee:

(1) Submit an application for membership on the Subcommittee;

(2) File registration documents with the relevant administrative departments of the state;

(3) The Subcommittee will review the application in accordance with the above-mentioned requirements, approve those applications that meet the conditions for joining the Subcommittee, and conduct registration.

Article Sixteen: Rights of Members:

(1) To elect, to be elected and to vote within the Subcommittee;

(2) To participate in the various activities organized by the Subcommittee;

(3) To enjoy the various services provided by the Subcommittee;

(4) To bring forth comments, suggestions and proposals on relevant issues involving import and export;

(5) To bring forth comments, suggestions and proposals on relevant issues involving the organization of the Subcommittee;

(6) To monitor the work of the Subcommittee, and bring forth comments and suggestions;

(7) To disclose and expose enterprises and individuals who violate the state laws, regulations and policies, who violate this Charter, who disobey resolutions of the Subcommittee, and who harm the interests of the state or its members;

(8) To freely resign from the Subcommittee.

Article Seventeen: Obligations of Members

(1) Comply with the Charter of the Subcommittee;

(2) Implement the resolutions and agreements of the Subcommittee;

(3) Actively participate in the various activities organized by the Subcommittee;

(4) Perform their tasks as required by the Subcommittee;

(5) Report to the Subcommittee and provide relevant information, materials and data to the Subcommittee;

(6) Accept the coordination of the Subcommittee.

Article Eighteen: Members wishing to resign from the Subcommittee shall inform the Subcommittee in writing, return all relevant documents evidencing its membership, and initiate the formal membership resignation process.

Article Nineteen: The Subcommittee will punish members found to have engaged in the following activities:

(1) Violation of the charter of the Subcommittee;

(2) Failure to implement the resolutions of the Subcommittee;

(3) Failure to implement industry agreements;

(4) Violation of state laws, regulations and rules in business activities;

The disciplinary actions of the Subcommittee include circulating of a notice of public criticism, issuing a warning, temporarily suspending membership, and termination of membership. Punishing a member must be approved by the Council of the Subcommittee (hereafter referred to as "the Council").

Article Twenty: The Subcommittee implements a system of regular membership registration, and the timeframe and procedures for registration is determined by the Council. Failure to register within the specific timeframe will result in an automatic loss of membership.

Section Four: Organizational Structure

Article Twenty-One: The Annual Meeting of the members of the Subcommittee (hereafter referred to as "the Annual Meeting") is the organization of ultimate power in the Subcommittee.

Article Twenty-Two: The Annual Meeting exercises the following duties:

(1) Make decisions regarding the guidelines and tasks of the Subcommittee;

(2) Formulate, review, and amend the charter of the Subcommittee;

(3) Formulate, review, and amend the important working rules of the Subcommittee;

(4) Review the work reports of the Council;

(5) Elect and dismiss the Subcommittee's Council members;

(6) Elect and dismiss the Subcommittee's Investigative Group members;

(7) Review proposals of the Council and members;

(8) Make decisions regarding issues of dissolution;

(9) Make decisions regarding other important issues.

Article Twenty-Three: The Annual Meeting is held once a year. In case of any extenuating circumstances, and upon approval by a vote of the Council or upon a proposal brought forth by more than half of the members, the meeting date can be moved up or extended.

Article Twenty-Four: Upon a proposal jointly brought forth by one-third of the members or more than one-half of the Council members, or upon a request brought forth by a supervising governmental agency, an Interim Meeting may be held.

Article Twenty-Five: The Interim Meeting exercises the following duties:

(1) Review proposals of the Council and members;

(2) Formulate specific coordination solutions;

(3) Coordinate other issues related to the work of the Subcommittee.

Article Twenty-Six: The Annual Meeting or the Interim Meeting can be held only when two-thirds of the members are present at the meeting. A resolution thereof can go into effect only when it is approved through voting by more than two thirds of the members present at the meeting.

Article Twenty-Seven: A Council is established by the Subcommittee. The Council is the enforcement body of the Annual Meeting, performs the routine work of the Subcommittee when the Annual Meeting is not in session, and is responsible for the Annual Meeting. The Council exercises the following duties:

(1) Implement the resolutions of the Annual Meeting and the Interim Meeting;

(2) Elect and dismiss the Chairman, the Vice-Chairman, the Secretary-General and the Deputy Secretary-General of the Council;

(3) Guide the routine work of the Subcommittee;

(4) Prepare for the convening of the Annual Meeting and the Interim Meeting;

(5) Submit work reports to the Annual Meeting;

(6) Organize and coordinate the specific implementation of resolutions;

(7) Invite businesses to join the Subcommittee;

(8) Receive, review and respond to member proposals;

(9) Accept the recommendations made by the Investigative Group of the Subcommitttee, and punish members found to be in violation of the rules;

(10) Perform other duties authorized by the government and the Chamber of Commerce and entrusted by the Annual Meeting.

Article Twenty-Eight: The Council has a fixed term of office. Each term of office is four years, and upon expiration of the term of office of the Council, the Annual Meeting is held to reelect the Council. When the Annual Meeting is moved up or postponed, the term of office of the Council will be modified accordingly.

Article Twenty-Nine: The slate of candidate for Council of the Subcommittee and the method for its determination shall be proposed by the Council, which is responsible for the preparations for the convening of the Member Meeting, after seeking written opinions from all members. The Subcommittee Council is formed through a democratic election at the Annual Meeting. Subcommittee

Council members can only be selected from the members of the Subcommittee. Council members can hold office for another term upon being reelected.

Article Thirty: The Council holds two meetings each year, which are to be presided over and called by the chairman of the Subcommittee Council. When the chairman of the Council thinks it necessary, upon seeking opinions from the Council members, or upon a proposal jointly brought forward by more than one-half of the members, an Interim Council meeting may be held. When there are extenuating circumstances, the meeting can be held by telecommunication.

Article Thirty-One: A council meeting can be held only when more than three-quarters of the Council members are present at the meeting. The resolutions thereof can only take effect when it is approved through a vote by more than two-thirds of the Council members present at the meeting.

Article Thirty-Two: an Investigative Group is set up in the Subcommittee. The Investigative Group of the Subcommittee is the monitoring organization of the Subcommittee, and is responsible for the Annual Meeting of the Subcommittee.

Article Thirty-Three: The Investigative Group of the Subcommittee exercises the following functions and powers:

(1) Monitor the implementation of the charter and the various resolutions of the Subcommittee;

(2) The position of Chairman of the Investigative Group is concurrently held by the Secretary-General;

(3) Receive reports from the members of the Subcommittee regarding various accusations of violations of the state laws, regulations, or the charter and resolutions of the Subcommittee, and conduct investigations;

(4) Organize questioning of members accused of violations of the rules;

(5) Cast votes to arbitrate concerning member conduct to determine whether or not its conduct violates the rules;

(6) Submit work reports to the Annual Meeting of the Subcommittee;

(7) Submit determinations of rule violation to the Subcommittee Council;

(8) Perform other duties entrusted by the Member Meeting of the Subcommittee and through industry agreements.

Article Thirty-Four: The Investigative Group has a fixed term of office, which is the same as that of the Council, and is re-elected concurrently with the Council. The members of the Investigative Group are determined through a democratic election at the Member Meeting. The members of the Investigative Group can only be selected from among the members of the Subcommittee. The members of the Investigative Group can hold office for another term upon being reelected. A member of the Investigative Group cannot concurrently serve as a member of the Council (with the exception of the staff of the Chamber of Commerce).

Article Thirty-Five: The Investigative Group of the Subcommittee does not hold regular meetings; meetings will be convened by the Group's chairman in accordance with actual circumstances and needs.

Section Five: Leadership

Article Thirty-Six: The Subcommittee has one Chairman, one Vice-Chairman, one Investigative Group Chairman, one Secretary-General, and one Deputy Secretary-General.

Article Thirty-Seven: The Chairman and the Vice-Chairman are determined through a democratic election by the Council; the term of office is one year, and they can hold office for another term upon being reelected. The president can only be selected from the representatives of the member organizations during that term.

Article Thirty-Eight: The Chairman of the Investigative Group of the Subcommittee has a term of office of one year, and can hold the office for another term upon being reelected.

Article Thirty-Nine: The Vice-Chairman, the Secretary-General, and the Deputy Secretary-General are positions assumed by members of the permanent administrative body of the Chamber of Commerce. The Vice-Chairman, the Secretary-General, and the Deputy Secretary-General are nominated by the Chairman of the Chamber of Commerce, and are determined through election by the Council. The term of office thereof is the same as that of the leadership positions mentioned above. The Secretary-General can hold the office for another term upon being reelected.

Article Forty: Duties of the Council Chairman

(1) Convene and chair Council meetings;

(2) Represent the Subcommittee to the public, and sign important documents on its behalf;

(3) Preside over the work at the Subcommittee and the Council;

(4) Review the status of the implementation of the resolutions of the Annual Meeting and the Council;

(5) Assume responsibility for the Annual Meeting and the Council, and submit work reports to them.

Article Forty-One: The Vice-Chairman assists the Chairman in his duties, and when the Chairman cannot perform his duties for any reason, those duties will be assumed by the Vice-Chairman.

Article Forty-Two: Duties of the Chairman of the Investigative Group:

(1) Convene and chair Subcommittee Investigative Group meetings;

(2) Preside over the work of the Investigative Group of the Subcommittee;

(3) Review the status of the implementation of the determinations reached by the Investigative Group of the Subcommittee;

(4) Assume responsibility for the Annual Meeting, and submit work reports to it.

Article Forty-Three: Duties of the Secretary-General

(1) Implement the resolutions of the Annual Meeting and the Council, and organize the implementation of the work plan of the Subcommittee;

(2) Assist the Chairman and Vice-Chairman of the Council;

(3) Take responsibility for the routine secretarial work and communications of the Subcommittee;

(4) Take responsibility for the routine administrative work of the Subcommittee;

(5) Recruit staff for the Subcommittee based on the working needs of the Subcommittee;

(6) Perform other duties as entrusted by the Annual Meeting, the Council, the Investigative Group, the Chairman of the Council, and the Chairman of the Investigative Group.

Article Forty-Four: The Deputy Secretary-General assists the Secretary-General, and when the Secretary-General cannot perform his duties for any reason, those duties will be assumed by the Deputy Secretary-General.

Section Six: Procedures for Amending this Charter

Article Forty-Five: This Charter can be amended only when a motion for amendment is brought forth by one-half of the members of two-thirds of the Council members.

Article Forty-Six: The amended version of this Charter can be submitted to the Annual Meeting for review only when it has been approved through a vote at the Council meeting.

Article Forty-Seven: The amended Charter must be approved at the Member Meeting, then be submitted to the Chamber of Commerce for review within fifteen days after approval, and takes effect when consent is obtained from the Chamber of Commerce.

Section Seven: Dissolution Process

Article Forty-Eight: When the Subcommittee needs to be dissolved for reasons such as completion of its mission, voluntary dissolution, splitting or merger, the Council needs to bring forth a motion for dissolution.

Article Forty-Nine: The motion for dissolution of the Subcommittee must be approved through a vote at the Member Meeting, and submitted to the Chamber and the supervising department at the Ministry of Foreign Trade and Economic Cooperation for review and approval.

Article Fifty: The Subcommittee is dissolved after the state social organization administration department completes the formal procedures for its dissolution.

Section Eight: Supplementary Articles

Article Fifty-One: No independent financial department shall be set up for the Subcommittee; its working funds will be collected and spent by the Subcommittee.

Article Fifty-Two: In order to monitor the implementation of industry self-disciplinary agreements, coordination plans, or industry resolutions, upon approval by relevant members, the Subcommittee can collect a security deposit in a specified amount for breach of agreement. The specific collection and expenditure method shall be separately formulated at the Subcommittee Annual Meeting, the Interim Meeting and the Council.

Article Fifty-Three: This Charter was approved by members through a vote on June 7, 2002.

Article Fifty-Four: The right to interpret this Charter belongs to the Subcommittee Council.

Article Fifty-Five: This Charter takes effect on the date on which it is reviewed and approved by the Chamber of Commerce.

Appendix 3:

I. List of Newly appointed Council Members:

1. Northeast Pharmaceutical Group
2. Jiangsu Jiangshan
3. Weisheng (Shijianzhuang) Pharmaceutical
4. Hebei Welcome Pharmaceutical Company
5. Director Qiao Haili, Western Medicine Department, China Chamber of Commerce of Medicines and Health Products Importers and Exporters

II. List of Subcommittee Investigative Group Members:

1. Director: Director Qiao Haili, Western Medicine Department, China Chamber of Commerce of Medicines and Health Products Importers and Exporters
2. Members: Jiangxi Medicines and Health Products Import and Export Corporation

   China Medicines and Health Products Import and Export Corporation

CHAMBER OF COMMERCE MEETING MINUTES, DATED DECEMBER 23, 2005

CHAMBER OF COMMERCE MEETING MINUTES

Date: Friday, December 23, 2005

Location: Chamber of Commerce Beijing meeting room

Attendees: Chamber of Commerce - Director Qiao Haili
Welcome - Huang Pingqi, Zhang Yingren
Weisheng - Feng Zhenying, Wang Yeguang
Northeast - Du Chengyang, Wang Renzhi, An Xiaoxia
Hualong - Liu Lei, Feng ? (daughter of Feng Yanming)
Anhui Tiger - Director Wu, Gong Qingchuan (Tiger Xinzhou)
Jiangshan - Director Kong, Wang Qi

[Not Translated]

2. Arrangement to suspend production:

- Time of suspension of production: Northeast will suspend its production no later than May; the other 5 companies must arrange for the suspension of production between April 1-15. The specific date to commerce suspension can be self-determined, but they must be reported to Director Qiao of Chamber of Commerce in advance.
- Duration of suspension of production: Jiangshan will suspend its production for 47 days; the other 5 will suspend production for 40 days.
- Definition of suspension of production: the air compressor of the fermentation machines shall be switched off.

- Inspection mechanism; Northeast and Weisheng shall inspect one another; Hualong shall inspect Jiangshan; Jiangshan shall inspect Welcome; Welcome shall inspect Hualong.
- Penalty for violations: If production is not suspended in accordance with the schedule, the Chamber of Commerce will stop issuing export verification and approval seals until the enterprise suspends its production.

3. Market coordination measures

- Between January 1-15, 2006, each of these companies is prohibited from issuing price quotes to external parties (including foreign clients and foreign trade companies); after that time, all of the price quotes must exceed US$3 .35/kg. If any of the companies is found to quote a lower price, the sales manager of that company must report to the Chamber of Commerce to provide an explanation; otherwise, verification and chop will not be issued.
- Any company with pre-existing contracts with a price lower than US$3.35/kg must file a report with the Chamber of Commerce by December 31.

[Not Translated]

Drafted by: Wang Qi

cc: Director Kong, Director Wang

REPORT OF DR. PAULA STERN, DATED JUNE 5, 2009

Report of Dr. Paula Stern

Introduction

I, Paula Stern, hereby state and declare that:

(1) I am the Chairwoman of The Stern Group, Inc., a Washington, D.C.-based international policy advisory firm, and I have been retained by the Plaintiffs in this case to furnish my opinion in this Report as a trade policy and international economics expert. My resume (attached as Exhibit A) provides my educational background, including a B.A. from Goucher College; M.A. from Harvard University; and an M.A., M.A.L.D., and Ph.D. from Tufts University's Fletcher School of Law and Diplomacy.

(2) I am a former Commissioner (1978-1987) and Chairwoman (1984-86) of the United States International Trade Commission ("ITC"). From 1993-2003, I was a member of the President's Advisory Committee on Trade Policy and Negotiations (ACTPN) during the period when the US government was in negotiations with the People's Republic of China (PRC) regarding the market reforms the PRC needed to undertake as conditions for gaining accession to the World Trade Organization (WTO). From 1997-2000, I was co-chair of the International Competition Policy Advisory Committee (ICPAC) for the United States Attorney General and the Antitrust Division of the Department of Justice. On February 28, 2000, ICPAC issued its final report which included proposals for reforming U.S. international competition policymaking including actions to enhance multilateral cooperation to

prosecute international cartels.[1] In February 2001, at the invitation of the PRC I participated in a Beijing planning session of international trade and economic policy experts in preparation for the Asia Pacific Economic Cooperation (APEC) forum's 9th annual Leaders Meeting, which the PRC hosted in Shanghai on October 20-21, 2001. On December 1, 2004, I provided expert testimony on behalf of The Coalition of Shrimp Exporters/Producers of South China in "Certain Frozen and Canned Warm-water Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand and Vietnam," ITC antidumping investigation numbers 731-TA-1063-1068.

(3) In light of the report of Professor Shen Sibao, I submit this report to compare and contrast the public statements and written testimony by the government of the PRC regarding the role the state plays in China's economy. Specifically, PRC's Ministry of Commerce[2] (MOFCOM) made representations to the Court in this case that it mandated China's vitamin C (VC) producers to coordinate prices for their exports. This "compulsion" notion contradicts official PRC statements issued repeatedly and consistently that assert that the Chinese economy is no longer a state dictated, managed economy but rather

1. *See* Chapter 4 of ICPAC Report entitled "International Anticartel Enforcement and Interagency Enforcement Cooperation." <http://www.usdoj.gov/atr/icpac/finalreport.htm>

2. The Ministry of Commerce is also known as MOFCOM (Ministry of Commerce of the People's Republic of China); before 2002 MOFCOME was known as MOFTEC (Ministry of Foreign Trade and Economic Cooperation).

through thirty years of "reform and opening up"[3] China has achieved the status of a market economy wherein individuals and enterprises make independent market driven decisions regarding pricing and other market choices.

(4) In undertaking this assignment, I have reviewed Defendant's Motion to Dismiss, the Amicus Curiae Brief ("Amicus Brief") and supporting exhibits, the Plaintiffs Memorandum in Opposition to Defendants Motion to Dismiss, the Memorandum and Order on Motion to Dismiss, the Plaintiffs Memorandum in Opposition to Defendants Motion to Dismiss, the Plaintiff's Supplemental Memorandum in Opposition to Defendants' Motion to Dismiss, the Defendants' Response to Plaintiffs Supplemental Memorandum in Opposition to Motion to Dismiss, the Ministry of Commerce of the PRC Response to the Supplemental Opposition to Motion to Dismiss, the Declaration of Professor James V. Feinerman dated August 15, 2006 ("Feinerman Declaration"), Expert Report of Professor Shen Sibao dated February 19, 2009 ("Sibao Report"), and the Expert Report of Professor James B. Speta dated February 20, 2009 ("Speta Report"). I have also reviewed documents filed by the PRC's MOFCOM at the WTO, U.S. Department of Commerce (DoC) and the European Commission (EC) Furthermore, I have reviewed public speeches and authorized statements attributed to high ranking government officials of the People's Republic of China. (See Exhibit B)

(5) The organizational approach I undertook for this assignment was to review the Sibao report as well as the

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3. *See* World Trade Organization, *Trade Policy Review Report by the People's Republic of China*, WT/TPR/G/161 (Geneva, 2006) p.6

defendants' assertions to the court that the PRC not only condoned but also mandated and enforced the formation and operation of a cartel among China's domestic VC exporters.[4] I then compared those statements with official statements that MOFCOM and other official representatives of the PRC have made before the WTO, the DoC and EC that China is a "socialist market economy" and should be treated by its WTO trading partners as a market economy.[5] The PRC has consistently and repeatedly argued that for decades its "reform and opening-up" at home and compliance with WTO articles of accession vis-à-vis its fellow WTO members support its claim to be a market economy. The PRC has also made similar arguments regarding its claim that Chinese enterprises and the Chinese economy should be treated as a market economy for purposes of the WTO sanctioned antidumping law.[6]

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4. *See* Amicus Brief., 5-6. *See* also Report by Professor Shen Sibao 19-23.

5. *See* Huang, Yong. "Pursuing the Second Best: The History, Momentum, and Remaining Issues of China's Anti-Monopoly Law," *Antitrust Law Journal* 75:117 (2008): 3 Huang writes, "Although 'socialist market economy' is a politically sensitive phrase, it is still a 'market economy'." *See* also European Parliament – Committee on International Trade, *Market Economy Status and the People's Republic of China*, CM/598044EN.doc (Strasbourg, 2006) Also *see* Huang, Yong. "Pursuing the Second Best: The History, Momentum, and Remaining Issues of China's Anti-Monopoly Law," *Antitrust Law Journal* 75:117 (2008): 3 Huang writes, "Although 'socialist market economy' is a politically sensitive phrase, it is still a 'market economy'."

6. To sell at "dumped prices" means to sell below the cost of production or below home prices. If an industry in a WTO member state can demonstrate that imports from China are being sold

at "dumped" prices and are causing "material injury," then the government authorities of that member state can impose dumping duties. Many Chinese industries have been the subject of numerous dumping complaints in the United States. These cases are costly to defend, and consequently the PRC, the Chambers of Commerce, and individual enterprises have learned over the years to avoid so called "unfair" or "dumped" prices on their exported goods in order to avert importing countries' issuing anti-dumping duties on Chinese imports.

From the time of its accession Chinese authorities have been concerned about the way in which the antidumping laws would be applied. In 2001 the WTO addressed this matter: **"Price Comparability in Determining Subsidies and Dumping:** Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese Origin into a WTO Member consistent with the following (i) If the producers under investigation can clearly show that **market economy** conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability; (ii) The importing WTO member may use a methodology that is not based on a strict comparison with domestic prices or costs in China **if the producers under investigation cannot clearly show that market economy conditions prevail in the industry** producing the like product with regard to manufacture, production and sale of that product...(d) Once China has established, under the national law of the importing WTO Member, that it is a **market economy**, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains **market economy criteria** as of the date of accession....In addition, should China establish, pursuant to the national law of importing WTO Member,

(6) This year marks the thirtieth anniversary of the beginning of market reform in the PRC. The PRC achieved sufficient reform in December, 2001, to convince the membership of the WTO to permit the PRC to accede to the WTO. Since then, China has maintained its WTO obligations to continue its market reforms. Furthermore, it has carried out a concerted campaign to be treated as a market economy for the purposes of the WTO sanctioned anti-dumping and countervailing duty laws. To date, its arguments have convinced 91 Members of the World Trade Organization to grant the PRC market economy status.[7] In 2006, the United States Department of Commerce

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that **market economy** conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector." (*See* World Trade Organization, *Accession of the People's Republic of China*, WT/L/432 (Geneva, 2001) p.8-9)

Again, the WTO in 2008 in its Trade Policy Review cited that, "For 13 consecutive years from 1999 to 2007, China has been subject to the largest number of antidumping actions in the world. While China's merchandise exports only accounted for 6% of the world's total, the proportion of anti-dumping cases against China accounted for 15.6% of all the antidumping measures by the WTO Members. From 2006 to 2007, the number of antidumping actions against China was as high as 126. During the same period, 10 countervailing investigations were also initiated against China, making China the largest target of countervailing measures as well." World Trade Organization, *Trade Policy Review Report by China*, WT/TPR/G/199 (Geneva, 2008) p. 14 (emphasis added)

7. "China still striving for 'market economy' status from the EU," *China View*, May 21, 2009, <http://news.xinhuanet.com/english/2009-05/21/content_11415493.htm>

established a new policy of treating the PRC as a market economy for purposes of the countervailing duty law. The DoC continues to take into consideration – but nonetheless rejects – the PRC's market economy claims in individual dumping litigation.[8] Additionally, the European Union has under active review an internal report which notes China's "considerable progress" towards attaining market economy status for purposes of the trade laws.[9]

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8. *See* Bown, Chad. "U.S.-China Trade Conflicts and the Future of the WTO." *The Fletcher Forum of World Affairs*. 33:1 (2009): 44. Chad Bown notes that "the China-U.S. *AD/CVD* dispute stems from a U.S. trade policy decision made in March 2007, when the Bush administration reversed a 23-year-old U.S. policy that refused calls under the countervailing duty – or anti-subsidy – law for new tariffs against exports from China and other non-market economies (NME's). This policy reversal introduced a troubling inconsistency across U.S. unfair trade laws with particularly onerous implications for China. While China continues to be treated as a NME under U.S. antidumping law – so that the U.S. Department of Commerce has additional discretion with which to construct punitive duties – it is treated as a market economy under the U.S. countervailing duty law, so that it can potentially face trade restrictions under that policy as well....Part of Beijing's argument in this *AC/CVD* dispute may be such a challenge to U.S. policy. The United States has initiated at least fourteen new countervailing duty investigations against a wide range of Chinese products since the March 2007 decision, and a number of them (e.g., steel pipe and tube, tires, and laminated sacks) have resulted in new U.S. import barriers that China cites in its WTO dispute initiation request." For a full press release from the Department of Commerce see <http://www.commerce.gov/opa/press/Secretary_Gutierrez/2007_Releases/March/30_Gutierrez_China_Anti-subsidy_law_application.rls.html>

9. "EU 'sees progress' by China on market economy status," *EU Business*, Sept. 18, 2008, <http://www.eubusiness.com/news-eu/1221733922.11/>

Summary of Conclusions:

(7) In his order that denies the defendants' motion to dismiss, Judge Trager observes "[T]he parties hotly contest both the origin and even existence of government compulsion."[10] Furthermore, he states that "If defendants wished to form a cartel, they would have had to ask for a government sanction..."[11] Indeed, "[I]t is not clear that this scenario of defendants making their own choices and then asking for the government's imprimatur – which may or may not have occurred in this case – would qualify as the type of governmental act or compulsion contemplated by the defences raised by the defendants."[12]

(8) Further, the Court opines, "The defendants and the Ministry stress the importance to China of being able to manage the transition from a command to a market economy."[13] In addition, the judge stated, "The Ministry's Brief is, therefore, entitled to substantial deference, but will not be taken as conclusive evidence of compulsion, particularly where, as here, the plain language of the documentary evidence submitted by plaintiffs directly contradicts the Ministry's position."[14]

(9) There is another whole body of documents that, to borrow Judge Trager's words, "contradicts the Ministry's

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10. *In RE Vitamin C Antitrust Litigation*, E.D. N.Y. 1, 20 (2008).

11. *In RE Vit.* E.D. U.S., 1 at 30

12. *In RE Vit.* E.D. U.S., 1 at 30

13. *In RE Vit.* E.D. U.S., 1 at 31

14. *In RE Vit.* E.D. U.S., 1 at 25

position." The primary purpose of my testimony is to bring to the court's attention where the defendants' briefs are contradicted by numerous other statements issued by the PRC. The compulsion argument of the Amicus Brief filed by MOFCOM and Professor Shen Sibao contradicts official Chinese government public pronouncements made elsewhere which assert that China has undertaken international trade law obligations and has transitioned to a market economy.

(10) The PRC has pursued a vigorous campaign to convince its trading partners and its fellow members of the WTO, post formal accession, that it has attained market economy status.[15] This position starkly contrasts with the Minister of Commerce's testimony in this case that it compelled the VC producers to fix higher prices. The PRC joined the WTO in 2001 as its 143rd member after 15 years of arduous negotiations with the United States, the European Union, Mexico, and effectively the totality of the World Trade Organization membership. At that time, China pledged to continue making reforms to move the government out of a command and control position and toward a market economy. These commitments were made to ensure that

15. Professor Chad Bown notes that "China took on a number of such commitments as a condition of its WTO entry in 2001 ... It promised to continue privatization of state-owned enterprises (SOEs)....These commitment promised implicit benefits to other WTO members, as well as serving to complement unilateral efforts – to promote market oriented reforms in its domestic economy....As a price for China's accession, the membership demanded that Beijing take on many more policy commitments than had traditionally been required of other acceding countries at a comparable stage of economic development." Bown, Chad. "U.S.-China Trade Conflicts." *The Fletcher Forum of World Affairs*. (2009): 32-33.

China's private citizens and enterprises are able to make unrestrained, individual economic decisions. To quote one scholar, "China has lived up and perhaps even exceeded the pace of certain reform demands."[16]

(11) For the defendants in this case to suggest that the Chinese government compelled the VC producers to participate in an export cartel is to contradict the official assurances given by the PRC at the time of its WTO accession in 2001 and to contradict numerous statements made since. Taken together or separately, these statements provide a picture of an economic regulatory policy that reduces the role of government in setting prices, encourages competition in the marketplace, and permits "voluntariness of defendants' actions."[17]

(12) In particular Professor Sibao's assertions of a government compelled cartel stand in stark contradiction to official public statements made elsewhere by the PRC. Most of Professor Sibao's argument relies on documents that come from an historical timeframe that predates the timeframe covered in this case. He does not however, make the compulsion argument in his reference to the post 2001 verification and chop system. He states "The Chamber's legal authority to review and place its "chop" of approval on a manufacturer's export contract is one of many indicia of the governmental authority that MOFCOM delegated to the Chamber to regulate the Vitamin C industry."[18] He continues, "**China's accession to the WTO, did not in any**

16. Ibid., 33

17. This term comes from the memorandum and opinion of Judge Trager.

18. *See* Report of Professor Shen Sibao, 19 Feb, 2009, p. 19

way change the level of control that the government maintained over the vitamin C industry....the Vitamin C Subcommittee remained a government-authorized coordination organization, within the Chamber, which was set up in accordance with national regulations and policies and was delegated with authority to regulate export on behalf of the government. The price-coordinating meetings and industry-wide agreement regarding production cutbacks, export quotas and other measures that were facilitated by the Vitamin C Subcommittee continued to serve to advance national interests...and to maintain the proper export order with which the government was concerned."[19] Professor Sibao continues stating that "Plaintiffs misunderstand China's export regulatory system. Chinese laws and regulations put in place a **mandatory** 'industry coordination' process for exports of important national interest....Once appropriate measures (such as quotas, **price** or volume restriction, or mandated joint activities) are adopted by the Chamber, such measures become **mandatory** as a matter of Chinese law and regulatory practices."[20]

(13) The documented official PRC statements below are intended to assist the court in its "further inquiry" to show that the "compulsion" argument in this case is contradictory. They stand in stark contrast to the statements provided by the Chinese government in the Amicus Brief and Professor Sibao's Report. These statements are indicative of China's solid commitment to "opening up" its economy and ensuring that the PRC

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19. Ibid., 19-20

20. Ibid., 21 For further evidence see Professor Sibao's report from page 19-23.

maintain its international commitments, in particular the commitments codified under its accession agreement with the WTO:

1) **WTO Related Documents:**

- (2001) "China shall, subject to paragraph 2 below, **allow prices for traded goods and services in every sector to be determined by market forces**, and multi-tier pricing practices for such goods and services shall be eliminated. The goods and services listed in Annex 4 may be subject to price controls, consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4 of the Agreement on Agriculture. Except in exceptional circumstances, and **subject to notifications to the WTO, price controls shall not be extended to goods or services** beyond those listed in Annex 4, and **China shall make best efforts to reduce and eliminate these controls.** China shall publish in the official journal the list of goods and services subject to state pricing and changes thereto."[21]

- (2001) "The representative of China stated that in formulating government prices and government guidance prices, the following criteria were taken into account: normal production costs, supply and demand situation, relevant government policies and prices of related products. When fixing prices of consumer goods, consideration was given to the limits of consumers' purchasing power. He noted that due to continued reform of China's price system, the **share**

21. World Trade Organization, *Accession of the People's Republic of China*, WT/L/432 (Geneva, 2001) p. 6 (emphasis added)

of government prices had dropped substantially and that of market-regulated prices had increased; of social retailing products, the share of government prices was about 4 per cent that of governmental guidance prices 1.2 percent **and that of market-regulated prices 94.7 per cent**....The share of directly government controlled prices has **been much reduced. China's price system was becoming increasingly rationalized, creating a relatively fair marketplace for all enterprises to compete on an equal footing."**[22]

- (2001) "The representative of China confirmed that it would publish in the official journal the list of goods and services subject to state pricing and changes thereto, together with the price-setting mechanisms and policies...The representative of China confirmed that the official journal providing price information was the Pricing Monthly of the People's Republic of China, published in Beijing. It was a monthly magazine listing all products and services priced by the state."[23]

- (2001) **"The representative of China noted** that the Government of China **encouraged fair competition and was against acts of unfair competition of all kinds."**[24]

- (2006) **"Reform and opening up is China's established national policy.** The market-oriented reform started in 1979 brought about dramatic changes in China's

22. World Trade Organization, *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (Geneva, 2001) p. 11 (emphasis added)

23. Ibid., 12

24. Ibid., (emphasis added)

economic system. In October 1992, China officially set the objective of establishing a socialist market economy system. Subsequently an overall economic system reform was unfolded and major breakthrough was made in the fiscal, taxation, financial, investment, foreign exchange, foreign trade and pricing system, which laid a solid foundation for a socialist market economy system. **Up to 2000, a socialist market economy system had already taken shape and China entered a new stage of improving the system."**[25]

- (2006) "In respect of the **non-public sector** development, the *Constitution of the People's Republic of China* as amended in March 1999 and March 2004 provides in Article 11 that the non-public sectors prescribed by law, constitute an important component of the socialist market economy; the state **protects the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors**....In China today, the **non-public sector consists of foreign invested enterprises, self-employed individual industrial and commercial households and private enterprises."**[26]

- (2006) "China's accession to the WTO in December 2001 **marked a new era of China's opening up. After WTO accession, the regional opening up approach was replaced by a nation-wide open policy; the coverage extended from the traditional trade in goods to**

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25. World Trade Organization, *Trade Policy Review Report by the People's Republic of China*, WT/TPR/G/161 (Geneva, 2006) p. 6 (emphasis added)

26. Ibid., 6 (emphasis added)

trade in services; the level of market access further advanced access conditions codified into laws and regulations with great transparency and rule-based. The WTO fundamental principles such as MFN and national treatment as well as **China's WTO accession commitments have become the norms followed by China in the opening process."**[27]

- (2006) **"Opening up is China's long term basic national policy.** The Chinese Government adheres to the 'mutually beneficial win-for-all' opening strategy, and takes the pursuance of national interests and promotion of common development as the basic principles in handling economic and trade relations with all countries and economies."[28]

- (2006) "China's objective in building a socialist market economy system and its **fundamental policies of reform and opening-up match with the basic principles of the multilateral trading system based on market economy**....Ever since WTO accession China has abided by WTO rules, lived up to the extensive commitments made in the accession and made comprehensive adjustment of its trade regime and trade policy....**Before and after the accession, China systematically overhauled existing laws, administrative regulations and department rules to comply with WTO rules and accession commitments. From the end of 1999 to the end of 2005, the Central Government adopted, revised or abolished more than 2,000 pieces of laws, administrative regulations**

27. Ibid., 8 (emphasis added)

28. Ibid., 11 (emphasis added)

and department rules....The adoption, revision, and abolishment of laws, administrative regulations and department rules in this overhaul ensure the consistency of China's trade regime with the WTO rules and accession commitments."[29]

- (2006) "Deepen the Reform and Raise Further the Level of Opening: All the achievements that have been made in China's economic and social development are closely linked with the reform and open policy. In the process of future development, the Chinese Government **will persist in the reform and open policy, continue to improve the market economy system and further raise the level of opening up policy.**"[30]

2) **WTO Statements Extended to Vitamin C:**

- (2002) "China maintains export administration of a small number of products for the purposes of protecting public interest, avoiding shortage in domestic supply, conserving the exhaustible natural resources, or undertaking the obligations under international treaties or intergovernmental agreements, which are in conformity to GATT 1994. From 1 January 2002, China gave up export administration of Chinese chestnut, reed mat, red bean, honey, colophony, tung wood and the board (to Japan), **vitamin C** ect. There are still 54 products subject to export administration, including live bovine and beef (to Hong Kong, China and Macao, China), fowls and meat (to Hong Kong, China and Macao, China), garlic tea, wheat, corn, rice, liquorices roots

29. Ibid., 12 (emphasis added)

30. Ibid., 21 (emphasis added)

and their products, rushes and their products, sugar, bauxite, light (dead)-burned magnesia, talc, flourspar, rare earth, tungsten ores and products, antimony ores and products, tin, zinc, coal, coke, crude oil, processes oil, paraffin wax, artificial corundum, heavy water, ozonosphere depleting materials, chemicals under supervision and control, chemicals used to produce narcotics, swan wood, silk, greige, cotton, woven fabrics, silver, platinum, certain steel products (to the U.S.), and etc. These export administrative measures have been notified to the WTO."[31]

- (2002) "**Export price of state trading enterprises is decided by the enterprises themselves.** It is usually constructed based on such costs as domestic procurement prices plus circulation costs (including warehousing, transportation, bank interests, and inspection fees etc.) with prices of the international markets taken account of as reference. According to the *Law of Pricing of People's Republic of China* and Annex 4 of the accession protocol, only a small number of commodities and services are subject to the government pricing or the enterprises. Apart from those stipulated few, the prices of the rest (sic) commodities and services are determined by the market forces."[32]

- (2006) "On 1 January 2002, China abolished export quotas and licenses for, *inter alia*, Chinese chestnuts,

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31. World Trade Organization, *Statement by the Head of the Chinese Delegation on the Transitional Review of China by the Council for Trade and Goods*, G/C/W/441 (Geneva, 2002) (emphasis added)

32. Ibid. (emphasis added)

reed mats, red beans, colophony, tung wood and board (to Japan) and **Vitamin C.**"[33]

3) **Statements by prominent Chinese officials guiding PRC toward a market economy:**

Vice Minister of Commerce Yi Xiaozhun. At the time Mr. Yi Xiaozhun was the Vice Minister of Commerce of the PRC.[34]

- (2006) "Madame Chairperson, on 11 December 2001, China became a WTO member after 15 years of lengthy negotiations. In the four years after its accession, China has continued unswervingly the basic state policy of reform and opening-up initiated in 1979 and implemented a wide range of commitments made upon its accession. **China has set up a system of market economy. Its market has been widely opened...**"[35]

- (2006) "Madame Chairperson, as it sets national policy, China would continue to **deepen its reform and opening-up** by balancing domestic development with the needs of **opening up**, China would continue to

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33. World Trade Organization, *Trade Policy Review*, WT/TPR/S/161Rev.1, (Geneva, 2006).

34. His portfolio covers the Department of International Trade and Economic Affairs, Department of WTO Affairs, and China Asia-Pacific Association for Promoting Economic and Trade Cooperation.

35. Vice Minister Yi Xiaozhun, *Statement to the First WTO Trade Policy Review of China*, 19 April 2006. <http://english.hbdofcom.gov/cn/file/2006/4-30/11638.html> (emphasis added)

pursue the opening-up strategy under the principles of mutual benefits for win-win results."[36]

- (2007) "It was a great event of historical significance in the course of China's reform and opening up. It was a result of major strategic decision of the Central Party Committee and the State Council made on the basis of their foresightedness and correct judgment on the global developments in the current era to actively meet the challenges of economic globalization."[37]

Mr. Long Yongtu. At the time Mr. Yongtu was the Director General at the Ministry of Foreign Economic Relations and Trade.[38]

- (2000) "China will abide by its commitments made in the bilateral and multilateral negotiations. We are convinced that the observance of these commitments will benefit all the Members of the WTO, will first

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36. Ibid. (emphasis added)

37. Vice Minister Yi Xiaozhun, *Speech Addressing the Opening Ceremony of the Special report on the 5th Anniversary of China's Accession to the WTO*, 22 Feb. 2007. <http://vienna2.mofcom.gov.cn.column/print.shtml?/aboutchina/200702/20070204394121>

38. From 1993-2002 Mr. Long Yongtu was the Director General at the Ministry of Foreign Economic Relations and Trade (MFERT). From 2002-2003 Mr. Yongtu served as Vice Minister in MFERT. He holds the position of Secretary General of the Boao Forum for Asia is a non-governmental non-profit international organization for leaders in government, business, and academia in Asia.

and foremost benefit China in the implementation of its reform and opening up policy."[39]

Shi Guangsheng. At the time Mr. Guangsheng was the Minister of Foreign Trade and Economic Cooperation, a post which he has held since 1998.

- (2000) "Joining the WTO is the requirement of our reform and **opening up** which is in the fundamental interest of China."[40]

- (2000) "After achieving its membership in the WTO, **China will open wider to the outside world with a more active attitude**, which constitutes an important step of China's energetic participation in the economic globalization....China will strictly abide by the WTO rules and honor its commitments. At present, China is, in line with the WTO rules and the requirement of establishing socialist market economic system, **conducting a thorough checking-up of the laws and regulations concerning foreign trade and economic cooperation and will make an amendment and addition to the legal procedures**, speeding up the establishment and improvement of

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39. H.E. Vice Minister LONG Yongtu, *Statement to the Head of the Chinese Delegation at the 13th Session of the Working Party on China*, 19 April 2000. <http://china-un.ch/eng/gjhyfy/hy2000/t85631.htm>

40. Shi Guangsheng, *Speech at Luncheon of the 21st Century Forum by Minister for Foreign Trade and Economic Cooperation*, "China's Accession to WTO and Participation in Economic Globalization", 16 June 2000. <http://english/mofcom.gov.cn/column/print.shtml?/translatorsgarden/famousspeech/200803> (emphasis added)

foreign-related economic administration system in conformity with the international practice....therefore get well prepared for the more fierce international competition."[41]

4) **Authorized Comments filed by the PRC at the US Department of Commerce re Market Economy Status:**

- (2004) "[I]t is time for the United States to change its designation of China as (sic) nonmarket economy and to recognize China as market economy....I would like to clarify some points with regard to China's WTO accession agreement... the agreement specifically provides that countries such as the United State are required to stop treating China as a nonmarket economy once China establishes a market economy without waiting until the end of 15 years....**The fact is China has changed and it has changed a lot.** Since, China has become a WTO member people have witnessed a lot of new developments which included constitutional recognition of new developments and protection of property rights, dramatic restructuring, reorganization and reduction of state-owned enterprises, **rising dominance of the private sector** in the Chinese economy, and further opening up to foreign investment ... treating China as a market economy, not only benefits China, but also benefits the United States."[42]

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41. Ibid. (emphasis added)

42. International Trade Administration Import Administration, Department of Commerce, *US-China Joint Commission on Commerce and Trade Working Group on*

- (2004) "China asks the United States to modify its NME (non-market economy) policy at this time.... This modification of current policy would constitute an important step in the United States bringing its AD [antidumping] law into compliance with its international obligations, until such time as China is treated as a market economy."[43]

- (2004) "China has made significant strides in transforming its economy from the centrally **planned and controlled economy** of decades ago. 'China's dramatic economy growth stems from its **opening of its economy to private enterprise and market forces**.' The Chinese economy is operating **on the basis of market principles to a sufficient extent**..."[44]

- (2004) "China looks forward to working with Department [U.S. Department of Commerce] officials in modifying current law by treating China as a **market economy** for antidumping purposes."[45]

Structural Issues, Remarks by Mr. Dai Yunlou, Minister Counsellor, Embassy of China, 3 June 2004, 40-46. (emphasis added)

43. *See* comments of Bruce Mitchell and Ned Marshak to U.S. Department of Commerce Assistant Secretary for Import Administration, Re: Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries on behalf of Bureau of Free Trade for Imports and Exports (BOFT), 1 June 2004, at p. 16-17

44. Ibid. (emphasis added)

45. Ibid., 40 (emphasis added)

- (2004) "**China has become a market economy.** China is entitled to market economy treatment in AD [antidumping] proceedings."[46]

- (2004) China's economy today is very different from the **centrally planned and controlled economy of decades ago.** Other countries including **New Zealand and Singapore, have recently reviewed the vast reforms and extensive restructuring that have occurred in China's economy and have decided that they will no longer treat China as a NME for antidumping purposes.**"[47]

- (2004) "China began its transition from a centrally planned economy under the leadership of the late Deng Xiaoping in 1978...**China made a decision to reform its economic system toward a market economy.** In October 1992, China made explicit that the objective of China's economic reforms was to establish a market economy system. In 2002, China proclaimed to the world that China has established a preliminary system of market economy. Along with the systemic transition, China has made **phenomenal progress in market liberalization and economic growth.** Developments have included the following: recognition and protection of property rights, restructuring, reorganization, and **reduction of state-owned enterprises, dominance**

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46. Ibid., 10 (emphasis added)

47. *See* comments of Wang Shichun, Director General BOFT Re: Public Hearings on U.S. China Joint Commission on Commerce and Trade Working Group on Structural Issues on Recognition of China as a Market Economy for Purposes of U.S. Antidumping Law, 19 May 2004, at p. 1 (emphasis added)

of private sector and private control over means of production and pricing, decrease of state control and administration over economic affairs."[48]

- (2004) "The Chinese Government has significantly decreased its ownership and control of the means of production. The government does not control the production of goods, except for a limited number of items of strategic importance or of particular importance to the public welfare....The emergence of a substantial and vibrant private sector ... is further evidence that **the government now maintains limited ownership or control over the means of production."**[49]

- (2004) "For the vast majority of products and services, the market, not the government, decides the allocation of resources, and enterprises make their price and output decisions **based on market considerations** ... the Chinese government reserves the right of state trading or designated trading and of setting or issuing guidance on prices for a very **limited** number of products and services, which are either of strategic significance or of particular importance to the public welfare. It has consistently been the Chinese Government's policy to accelerate market reform and promote the growth of the private sector."[50]

- (2004) "[T]he Chinese economy is operating on the basis of **market principles** to a sufficient extent that the domestic prices and costs of its enterprises can

48. Ibid., 4 (emphasis added)

49. Ibid., 7-8 (emphasis added)

50. Ibid. (emphasis added)

reasonably be used as a basis for calculating normal value..."[51]

- (2007) "CCCMC [China Chamber of Commerce, Metals and Chemicals Imports and Exports] submits that the Department's [Department of Commerce] current presumption is completely at odds with *more recent* factual findings that the Commerce Department itself has made about China's "present-day" 2006-2007 economy. The more recent factual findings include the following: '(1) The PRC government has undertaken significant reforms to promote the introduction of market forces into the economy'

  '(2) [P]rivate industry now dominates many sectors of the Chinese economy, and entrepreneurship is flourishing... the role of central planners is vastly smaller.'

  '(3) The PRC Government has eliminated price *controls* on most products; **market forces to determine prices of more than 90 percent of products traded in China**.'

  '(4) Many business entities in present-day China are generally free to direct most aspects of their operations, and to respond to (albeit limited) market forces.'

  '(5) Starting in the 1990's the PRC Government began to allow the development of a private industrial sector, which today dominates most of the industries in the PRC in which the Government has not explicitly preserved a leading role for SOE's [State Owned Enterprises]'

51. Ibid., 9 (emphasis added)

'(6) The **PRC Government has dismantled its monopoly over foreign trade** and finally extended trading rights to all FIE's in accordance with its WTO accession obligations.'"[52]

- (2007) "The Government of China, both in law and practice, **guarantees the ability of private** and foreign-owned enterprises **to operate freely, notwithstanding regulations typical of market economy countries.**"[53]
- (2007) "its [MOFCOM] belief that China should have been treated as a market economy in all ADD (antidumping duty) proceedings."[54]
- (2007) "MOFCOM again asks that the Department calculate Chinese ADD rates based on market economy principles to the maximum extent allowed by law."[55]

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52. *See* comments by Bruce Mitchell and Ned Marshak to Department of Commerce Assistant Secretary for Import Administration, April 20, 2007, Re: Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates on behalf of People's Republic of China Ministry of Commerce (MOFCOM) at p. 6-7 (emphasis in bold added; italics in original)

53. Ibid., 19 (emphasis added)

54. *See* comments by William Barringer, Daniel Porter and Matthew Nicely, June 25, 2007, Re: Response to the Department of Commerce's Request for Comments on Market Economy Treatment for Individual Respondents in Antidumping Proceedings Involving China at p. 4 (emphasis added)

55. Ibid., 7

- (2007) "MOFCOM has strongly protested the application of the CVD [countervailing duty] law to Chinese exports. If the Department persists in refusing to recognize that China is a market economy for ADD purposes, it cannot assess countervailing duties on Chinese exports; on the other hand, if the Department concludes that China, in fact, is a market economy whose exports are subject to the CVD law, then it must calculate ADD based on market economy principles."[56]

- (2007) "As admitted by the DOC in its recent findings on China's economic development, the **progress of China towards a market economy has been accomplished** in most sectors of the economy and with respect to most costs and **prices**."[57]

- "For quite a long time, the US and China have held different opinions on China's market economy status. **It is a prejudice against Chinese respondents that DOC refuses to recognize China's market economy status**...It is well known China has established a **market economy system over the past 20 years. The Government, at both national and local levels, has faded out from direct involvement in the management of enterprises and become a macro regulator.**"[58]

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56. Ibid., 11

57. *See* Comments of the Bureau of Fair Trade for Imports and Exports (BOFT) of the Ministry of Commerce (MOFCOM) of the People's Republic of China on Determination and Treatment of Market Oriented Enterprises to Assistant Secretary for Import Administration, 25 June 2007, at p. 3-4 (emphasis added)

58. *See* Comments of the China Chamber of Commerce of Metals, Minerals Chemicals Importers & Exporters on Market Oriented Enterprise, DC 728759v.1 (emphasis added)

- (2007) "[T]here is a sufficient market economy 'to determine whether the PRC Government has bestowed a {countervailable} benefit upon a Chinese producer,' it makes no logical or economic sense for the Commerce Department to designate China as a NME....**Over more than 20 years of accelerating reforms in its economic system, China has established a *bona fide* market economy system.** Such a market economy system is expressly written into the Chinese constitution. And indeed, by many accounts China has a more developed market economy system than some of the countries that the U.S. has recently designated as market economies."[59]

- (2007) "Since the October of 1992 when Chinese government established the objective of constructing the socialist market economy system, China has made phenomenal progress in her market-oriented reforms on economy for the past ten years. **The range of market mechanisms has been widened and the extent of it has been deepened. A market-economy system has been established in China.**"[60]

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59. *See* comments by Liu Danyang, Deputy Director BOFT Re: Commerce Department's *Second* Request for Comments Concerning Market Economy Treatment for Individual Respondents in Antidumping Proceedings Involving China to Assistant Secretary for Import Administration, 10 Dec. 2007, at p. 5-6 (emphasis added)

60. *See* comments by Liu Meikun, Vice President of China Chamber of Commerce for Imports and Exports of Machinery & Electronic Products (CCCME) Re: Comments in Response to Federal Register Notice, *Antidumping Methodologies*

5) European Commission policy on market economy status for the PRC:

The European Commission, like the U.S. Department of Commerce, has reviewed the PRC's demand that it be granted market economy status.[61] The following are officially authorized PRC statements arguing that the European Union should recognize that China is a market economy:

- (2004) "Over the past decade, China's gross domestic

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in Proceedings involving Certain Non-Market Economies: Market-Oriented Enterprise to Assistant Secretary for Import Administration, 18 June 2007, at p. 2 (emphasis added)

61. For greater detail see the following European Commission statements: "Soon after its accession to WTO, Beijing has started an impressive diplomatic campaign aiming at being recognized as a country worthy of equal status with the other players in the international economy. China claims that in light of the extent of its market reforms, refusal to grant MES [Market Economy Status] is discriminatory and no longer justified. Thus MES has clearly assumed a disproportionate place in China's foreign trade agenda." (European Parliament – Committee on International Trade, *Market Economy Status and the People's Republic of China*, CM/598044EN.doc (Strasbourg, 2006) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?ur=COM:2006:0631:FIN:EN:PDF>)

"Michael Pulch, Deputy Head of Delegation of the European Commission to China said that China had made tremendous economic progress since the reform and opening up drive that began 30 years ago." ("China still striving for 'market economy' status from EU," *China International Electronic Commerce Network*, May 22, 2009, <http://en.ec.com.cn/article/newsroom/newsroomtrade/200905/798932_1.html>)

product grew by more than 8 percent per year, and its foreign currency reserve exceeds 400 billion US dollars. Most economists agree that it is simply a matter of time until China's full market economy status is recognized by major economic powers. Some Chinese see US and EU reluctance to grant China full market economy status might result from the desire to hold the upper hand in negotiations over other issues, such as pressuring China to open its doors wider and faster in some industries."[62]

- (2009) "The Report on the Development of China's Market Economy 2005', which is released by economists in the Beijing Normal University, touches on many fields the United States and EU consider important for establishing a market economy.... Doctor Zeng Xuewen, one of the report's authors, says the report uses the market economy criteria adopted by the Europe and the US in anti-dumping and International Economic Freedom Index as part of the analysis. **Although the study shows China has already been a market economy, the United States and the European Union still refused to grant the country a 'market economy' status, a remedy for avoiding western anti-dumping investigations.**"[63]

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62. "Deng Xiaoping: Leading Thinker in China's Market Economy," *Xinhua News Agency*, Aug. 12, 2004, <http://www.china.org.cn/english/features/dengxiaoping/103785.htm>

63. "Study: China already a market economy," *China Daily Online*, Aug. 18, 2009, <http://www.chinadaily.com.cn/english/doc/2005-08/19/content_470566.htm> (emphasis added)

- (2009) "37 countries now regard China as a full market economy, declared Chinese Commerce Minister Bo Xilai recently ... Qin Chijiang, Vice Secretary-general of China Finance Society, is confident...**that after 25 years of reform, China has succeeded in building a market economic system. And it is the reality, he added.** China has **repeatedly urged the EU, its largest trade partner to solve the issue as early as possible.**"[64]
- (2009) "MOC [Ministry of Commerce] Minister Chen Deming stressed China was already a market economy during the China-EU High-level Economic and Trade Dialogue on May 7 and May 8."[65]

Compensation

Compensation for this engagement is based on the actual number of hours incurred at the hourly rate of the professionals assigned. The hourly rates for this engagement range from $185 to $600 per hour. My hourly rate on this assignment is $600. My compensation is not contingent on the outcome of this dispute.

Signature

/s/_____, June 5, 05/06/09

Paula Stern

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64. "37 countries regard China's market economy status," *People's Daily Online*, May 21, 2009, <http://www.chinadaily.com.cn/english/doc/2005-01/06/content_406523.htm> (emphasis added)

65. Ibid.

SUBMISSION OF THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA ON RECOGNITION OF CHINA AS A MARKET ECONOMY FOR PURPOSES OF U.S. ANTIDUMPING LAW, DATED MAY 19, 2004

MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

2, DONG CHANG'AN STREET, BEIJING, CHINA 100731

May 19, 2004

Mr. James J. Jochum

Assistant Secretary for Import Administration

U.S. Department of Commerce

Central Records Unit, Room 1870

Pennsylvania Avenue and 14th Street NW

Washington, DC 20230

Re: Public Hearings on U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues

Dear Assistant Secretary Jochum:

The Ministry of Commerce of the People's Republic of China hereby responds to the Department's May 3, 2004 Federal Register notice (69 Federal Resister 24,132) inviting comments and requests to testify concerning topics and issues for the U.S. - China Joint Commission on Commerce and Trade Working group on Structural Issues.

We attach an original and six copies of our written submission, as well as an electronic version on CD-ROM.

We, would appreciate the opportunity to make an oral presentation at the June 3 hearing. As requested in the notice, we provide below the name, address, telephone number, and position of the official who will be make a presentation on behalf of the People's Republic of China:

Dai Yunlou

The Economic and Commercial Counsellor

Embassy of the People's Republic of China

2133 Wisconsin Avenue, NW.

Washington D.C., 20007. U.S.A.

Tel: 001-202-625-3380, 001-202-625-3350

Fax: 001-202-337-5864, 001-202-625-3350

We also would appreciate the opportunity to extend the time for our presentation beyond the five-minute time limitation.

Sincerely,

/s/

Wang Shichun

Director General

Bureau of Fair Trade for Imports & Exports

Ministry of Commerce of P.R.C.

SUBMISSION OF

THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA

ON

RECOGNITION OF CHINA AS A MARKET ECONOMY FOR PURPOSES OF U.S. ANTIDUMPING LAW

MAY 19, 2004

INTRODUCTION

The Government of the People's Republic of China appreciates the opportunity to make a presentation in the Department of Commerce's public proceeding to identify topics and issues for discussion in the U.S.-China Joint Commission on Commerce and Trade Working Group on Structural issues concerning China's desire no longer to be treated as a non-market economy ("NME") under U.S. antidumping law.

As has been widely recognized, China's economy today is very different from the centrally planned and controlled economy of decades ago. Other countries, including New Zealand[1] and Singapore, have recently reviewed the vast reforms and extensive restructuring that have occurred in China's economy and have decided that they will no longer treat China as an NME for antidumping purposes. Similarly, China should be recognized as a market

1. Rt. Hon. Helen Clark (Prime Minister of New Zealand), New Zealand and China to Work Towards FTA, April 14, 2004, available at *www.beehive.gov.nz/ViewDocument.cfm?DocumentID=19432* (last accessed on April 17, 2004).

economy for purposes of United States antidumping law. On this issue, the various relevant factors should be viewed within the framework of the overall development of China's economy and in light of the specific context and purpose of the antidumping rules in which the NME issue arises.

GENERAL PRINCIPLES

As members of the World Trade Organization, both China and the United States are committed to a rules-based system of international trade and dispute resolution. Within this system, antidumping duties and countervailing duties exist as exceptions to the general trading rules concerning most-favored nation tariff treatment and bound tariff rates. Those exceptions exist solely to provide a remedy for specific export price discrimination and subsidy practices recognized as unfair trading practices. The international agreements and national laws governing antidumping duties and countervailing duties thus are remedial and not punitive, as such duties are limited to offsetting only the amount of any unfair pricing or subsidies. They are not meant to punish a country simply for having an economy with a different structure.

For "market economy" countries, trade distorting governmental interventions in the market are treated as subsidies and remedied through the WTO Subsidies Code and the application of countervailing duties. Unfairly low export pricing, relative to home market pricing and production costs, is remedied through the WTO Antidumping Agreement and antidumping duties.

For "non-market economy" countries, on the other hand, the United States has determined that no direct

remedy for subsidies is permitted, and unfair pricing is measured with reference to the "factors of production" used to produce the investigated products, valued using available data in "surrogate" countries. This methodology aimed at avoiding "distortions" in pricing by producers in the NME country introduces its own pricing distortions. The surrogate country selected has its own market distortions and peculiarities, based on its structure and comparative advantages. Moreover, data limitations generally mean that surrogate prices for individual "factors of production" are not prices for identical products, and surrogate values used for general and administrative expenses and for profits do not reflect those of comparable enterprises operating in comparable circumstances.

The issue of whether an economy should be treated for antidumping and countervailing duty purposes as a market economy or as a non-market economy should take into account which methodology best addresses the conduct sought to be remedied by antidumping and countervailing duties. In this connection, China observes that governments worldwide are involved and intervene in their economies. Governments in countries the United States treats as market economies for antidumping purposes provide trade-distorting subsidies, control interest rates, own production and trading companies, control natural resources, intervene in foreign exchange markets and impose currency controls, regulate the conditions of competition, and even set prices for certain goods and services.

The question of whether a country "operates on market principles of cost and pricing." 19 U.S.C. § 1677(18)(B), therefore necessarily is a question of degree and not absolutes, aa the United States itself recognizes in its six-factor NME test Each factor specifies that the Department is to consider "the extent" of market-oriented activity, including government ownership, foreign investment, currency convertibility, etc.

China believes that, in assessing whether the Chinese economy is market-driven to the necessary "extent," the central questions with respect to alleged distortions should be not whether distortions exist, as distortions exist in all economies, but rather whether each alleged distortion (1) is of the type intended to be addressed by the Subsidies Code and Antidumping Agreement, and thus falling outside normal tariff obligations, and (2) is incapable of being addressed adequately through the normal, market economy measures of antidumping and countervailing duties. Unless the NME antidumping methodology is better suited to fairly remedying the alleged distortion, it is not appropriate to resort to surrogate values that are themselves distorted.

MARKET ECONOMY DEVELOPMENTS IN CHINA

China began its transition from a centrally planned economy under the leadership of the late Deng Xiaoping in 1978. In 1979, China started promoting in rural areas the household contracted responsibility systems with remuneration linked to output, and farming households were entitled to full autonomy in arranging their production. In 1984, China made a decision to reform its economic system toward a market economy. In October 1992, China made explicit that the objective of China's

economic reforms was to establish a market economy system. In 2002, China proclaimed to the world that China has established a preliminary system of market economy. Along with the systemic transition, China has made phenomenal progress in market liberalization and economic growth.

Developments have included the following:

- recognition and protection of private property rights
- restructuring, reorganization, and reduction of state-owned enterprises
- dominance of private sector and private control over means of production and pricing
- decrease of state control and administration over economic affairs
- opening of economy to foreign investment

In light of this background of continuing economic liberalization, we address briefly each of the six factors in the Department's NME analysis.

I. The extent to which the Chinese currency is convertible into the currency of other countries

The currency of the People's Republic of China ("China"), the Renminbi ("RMB"), is freely convertible for current account transactions. Since December 1, 1996, China has adopted Article VIII of the International Monetary Fund ("IMF") Articles of Agreement.[2] The obligations imposed by Article VIII include: (1) the

2. IMF Annual Report 1997, at 72, available at *http://www.imf.org/external/pubs/ft/ar/97/pdf/file06.pdf* (last accessed May 17, 2004).

avoidance of restrictions on current payments; (2) the avoidance of discriminatory currency practices; and (3) the convertibility of foreign-held balances.[3] By adopting these obligations, China has removed all restrictions on payments and transfers for current transactions, which plainly are the most relevant for international trade.

China has also taken concrete steps towards full convertibility of capital account transactions. In the last two years, China has permitted foreign investors to acquire financing from the domestic Chinese market, and has permitted foreign banks to issue RMB securities. China has also launched the qualified foreign institutional investors ("QFII") program to facilitate foreign capital flow. In accordance with provisions of the IMF Articles of Agreement, however, China maintains a few restrictions on the movement of capital to prevent malicious attacks by speculative international short-term capital and to help maintain regional financial stability. Many countries that the Department recognizes as market economy countries, such as Russia and many former Soviet republics, maintain the same kind of measures for similar concerns. Nonetheless, it is China's goal, and China has made steady progress, toward achieving full convertibility of capital accounts.

II. The extent to which wage rates in China are determined by free bargaining between labor and management

The Chinese Government bas enacted and enforces laws to protect core labor standards and collective bargaining. Workers, with support from trade unions, are

3. Available at *http://www.imf.org/external/pubs/ft/aa/index.htm* (last accessed May 17, 2004).

enforcing their rights and the Government has developed mechanisms to assist workers.

The Chinese Government bas confirmed its commitment to a free labor market through legislative activities. Laws and regulations have been promulgated to promote free mobility of the work force by reforming the residency registration system, and to advance the practice of collective bargaining through fair negotiation between labor and management. Trade unions have independent civil status under Chinese law and represent workers' interests before a variety of labor dispute settlement forums. The public and private sectors have overwhelmingly adopted the labor contract system. Other than establishing government-regulated minimum wage and social security requirements to protect workers, the Chinese Government leaves wage determination to labor management negotiations and the operation of market forces.

III. The extent to which joint ventures or other investments by firms of other foreign countries are permitted in China

China not merely permits, but strongly encourages foreign direct investment. Over at least the past decade, China has attracted and continues to attract tremendous amounts of foreign investment and has handsomely rewarded foreign investors. 479,605 foreign-invested enterprises have been established in China since 1979.1n 2003, the number reached 41,081.

China prides itself on its open and favorable investment environment, based on the principle of national treatment for foreign investors. The Chinese legal framework bas been constantly improved to facilitate foreign investment

in its manifold forms, including wholly foreign-owned enterprises, China-foreign equity joint ventures, and China-foreign cooperative contractual enterprises. Foreign investors are free to establish joint ventures or other forms of investment to engage in commercial activities in a broad range of goods and services.

In keeping with its commitments for accession to the World Trade Organization ("WTO"), China has further broadened market access to foreign investment in areas including domestic and foreign trade, banking and insurance, and professional services.

IV. The extent of government ownership or control of the means of production

The Chinese Government has significantly decreased its ownership and control of the means of production. The government does not control the production of goods, except for a limited number of items of strategic importance or of particular importance to the public welfare.

The emergence of a substantial and vibrant private sector, including a large number of foreign-invested enterprises in many sectors of the economy, is further evidence that the government now maintains limited ownership or control over the means of production.

V. The extent of government control over the allocation of resources and over the price and output decisions of enterprises

For the vast majority of products and services, the market, not the government, decides the allocation of resources, and enterprises make their price and output

decisions based on market considerations. In accordance with its WTO accession protocol, however, the Chinese Government reserves the right of state trading or designated trading and of setting or issuing guidance on prices for a very limited number of products and services, which are either of strategic significance or of particular importance to the public welfare. It has consistently been the Chinese Government's policy to accelerate market reform and promote the growth of the private sector.

VI Such other factors as the administering authority considers appropriate

The world has witnessed the astounding transformation in China's economy, and China is now an important stakeholder in the global trading system. Its dramatic economic growth stems from the opening of its economy to private enterprise and market forces. Indeed, China is now the world's third largest importer, and the fourth largest exporter, conditions which resulted from the market-oriented developments and economic integration noted under each of the factors above.

For all of the foregoing reasons, the Chinese economy is operating on the basis of market principles to a sufficient extent that the domestic prices and costs of its enterprises can reasonably be used as a basis for calculating normal value within the meaning of the U.S. antidumping law. The Government of the People's Republic of China looks forward to discussions with the United Sates on the issue of revoking China's current NME status and recognizing China's market economy status for U.S. antidumping law purposes.

REPORT ON THE INVESTIGATION ON THE SHUTDOWN OF PRODUCTION OF WEISHENG PHARMACEUTICAL CO., LTD., DATED APRIL 19, 2006

On April 13, the two of us from Northeast Pharmaceutical Group Co., Ltd (NEPG) arrived in Shijazhuang for the investigation on the shutdown of production of Weisheng Pharmaceutical Co., Ltd (hereinafter referred to as Weisheng Pharmaceutical). Based on the information we collected, we made a report as follows:

We visited the vacuum pump room at 9:00 am on April 15. After that, we walked around the plant area before going to the conference toom to have a meeting for approximately half an hour. Weisheng Pharmaceutical's people gave us an indefinite answer about production technology and market information of VC, so the information we got could only be used as a reference.

1. The formation workshop of Weisheng Pharmaceutical's two VC production lines was out of operation at 8:00 am on April 15.

2. There were totally 18 air compressors including two 400m^3/min ones, four 200m^3/min ones, six 37m^3/min ones and six 6 m^3/min ones in Weisheng Pharmaceutical's air compressor room, but we only saw five 37m^3/min ones and three 6 m^3/min ones operating on site and the rest had gone out of operation. It was confirmed that Weisheng Pharmaceutical's fermentation workshop had been shut down, while the workshops of extraction, conversion and refining are still processing material, All workshops are expected to stop running on April 23.

3. They declined our request for taking a brief look at the operation sites, except for the plant area. When passing through the fermentation workshop, we saw the air filter assembly that had been dismantled, which further confirmed the stoppage of the fermentation process.

4. We were not allowed to visit the western part of the factory where series product and finished products warehouses are located. The project of the new production line of VC derivatives of Shijiazhuang Pharmaceutical. Weisheng Pharmaceutical Co., Ltd was launched in November 2005 and in four-floor building (an area of 2,000m^2 occupied), a multi-layer and diversified product structural system of VC Series has been established with 20 varieties of VC fine powder, VC-Na, VC calcium and VC particles. With a total investment of RMB110 million Yuan, the project has an annual designed productivity of 4,000 ton VC-Na and 3,000-ton VC particles (DC level). Together with existing production lines, Weisheng Pharmaceutical will have the annual throughput of derivatives products of 10,000 tons. The 100 mesh VC is generated by screening anf 200 mesh VC is generated by comminution using imported equipment. VC particles of C-90 and C-95 are produced as ordered by customers, and they were even sold at the price lower than cost because Weishen Pharmaceutical gives its top priority on expanding market shares and increasing customer base now.

5. the overall yield of VC is around 72% with refined recovery rate of less than 90%. Since VC products are packed with heat sealed double PVC plastic bags, it is less possible for them to become yellow

and agglomerated. At the time of our visit, Weisheng Pharmaceutical was just certified by CSCC, and people from Southwest Pharmaceutical Co., Ltd was visiting them, the COS registration was undergoing with documents sent to an agency and its QA inspectors were under the management by the member company, including their incomes.

6 The VC inventory is over 4,000 tons at the price of 2.8.

7. The business of Shijiazhuang Pharmaceutical Group does not look promising.

8. In the conversation, we got to know that the business of those four key companies under the control of China Pharmaceutical Group limited was not that promising. *Hebei Zhongnuo Pharmaceutical Co., Ltd* with the revenue of RMB 400 million Yuan sees sharply decreased profit margins due to the decline of price in their 7ACA key product. *Zhongnuo Pharmaceuticals Co., Ltd* with the revenue of RMB1.4 billon yuan faces the unfavorable situation of penicillin and preparation of regular medicine in sales and profits due to the decrease of prices and sales volumes. *Hebei Huarong Pharmaceutical Co., Ltd* with the revenue of RMB150 million Yuan has principle product of VB12 under the fierce competition. Weisheng Pharmaceuticals with revenue of RMB 1 billion Yuan has VC inventory exceeding 4,000 tons that are sold at the price that is close to the baseline of costs with poor profit margins.

The non-listed companies have been privatized (few stocks held by the Group), including *Ouyi Pharmaceutical Co., Ltd, Hebei Hongyuan*

Chemicals Company, Xiaowei Pharmaceutical Co., Ltd, Lerentang Pharmaceutical Co., Ltd, Hebei Yuanzheng Pharmaceutical Co., Ltd, Shijiazhuang No. 4 Pharmaceutical Co., Ltd and Hebei Union Pharmaceutical Co., Ltd. More than half of them are making fair profits, of which, *Lerentang* and *Hebei Yuanzheng* have made substantial profits.

In Particular, Shijiazhung Pharmaceutical Group attaches a great importance to marketing stategy for "Guoweikang" VC tablets. The Product is packaged is packaged attractively in different specifications and the large investment is made on marketing, as it is sold in most of drug stores and supermarkets, in front of which there is an eye-catching large advertisment. (The product in the specification of 100mg x 30 tablets is sold at the price of RMB 13 to 15 Yuan and the price varies with different packing.)

9. The information about North China Pharmaceutical Group and Wellcome Pharmaceutical Co., Ltd.

For North China Pharmaceutical Group, the biggest problem is financial strain and substantial losses. It has a plenty of finished products in stock with approximately 3,000 to 4,000 tons of VC mainly because of the sharp decrease of export volume from January to February. At the same time, the salaries of the sales people are based on a percentage of their sales volume, so they are discouraged with the decreased price. It is also troubled by environmental issues, according to the news that "North China Pharmaceutical Group included into the first group of 11 enterprises that handle environmental issues under the supervision of Provincial Environmental Protection Bureau" published on Yanzhao Evening

Paper on April 16. We also got to know that Wellcome's DC-level products were immediately improved in technology standard and quality since its shutdown and it's said that the joint venture project between Wellcome and DSM is in progress with a "work performance survey" being conducted lately, and the operation is progressing

In summary, in our conversation with them, we felt their sales people were under a high pressure and they were very much concerned about when NEPG's production was to be shut down. They strongly suggested, "We expect our company to stop operation in the second half of the year again under the planning of NEPG to prolong the production halt from 40 days to around 60 to 75 days in a year to really make a difference."

April 19, 2006

Import and Export Company

SELECTED EXHIBITS TO THE DECLARATION OF STEVEN R. NEWMARK IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR DETERMINATION OF FOREIGN LAW AND ENTRY OF JUDGMENT PURSUANT TO RULE 44.1, FED. R. CIV. P., FILED NOVEMBER 23, 2009

STATEMENT IN *IN RE VITAMIN C ANTITRUST LITIGATION* OF THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA, DATED AUGUST 31, 2009

MINISTRY OF COMMERCE OF THE
PEOPLE'S REPUBLIC OF CHINA
2, DONG CHANG'AN STREET, BEIJING,
CHINA 100731

Statement In *In Re Vitamin C Antitrust Litigation*, 06-MD-1738 (DGT)

August 31, 2009

Amicus The Ministry of Commerce of the People's Republic of China (the "Ministry") authorizes its Department of Treaty and Law to respectfully submit this Statement (together with an authorized English translation).

1. The Ministry has attached great importance to the antirust litigation in the United States brought against Chinese vitamin C exporters. The Ministry submitted to tills Court *the Brief of Amicus Curiae of the Ministry of Commerce of the People's Republic of China in support of the Defendants' Motion to Dismiss the Complaint* in

June 2006 and its *Statement In Re Vitamin C Antitrust Litigation* in June 2008. Taking notice of the comments and views made by Your Honor, the plaintiffs, plaintiffs' counsels and the experts, and the relevant documents, the Ministry would like to draw the Court's attention to the positions taken by the Ministry in the above-mentioned two documents, and would like to reiterate here that the alleged conduct by the defendant Chinese vitamin C exporters is the result of the defendants' performing their obligations to comply with Chinese laws, rather than conduct on their own initiative.

2. In order to prevent self-destructive competition through distorted pricing by Chinese exporters caught unprepared for the drastic change of China's export policies, and to mitigate potential exposures to antidumping investigations in other countries against Chinese exporters, the Ministry took active measures by exerting export regulation over certain commodities that might encounter or have encountered such problems. Although different regulatory measures may have been implemented in line with changes of circumstances at different times, enterprises in regulated industries were nevertheless compelled to comply with relevant rules and regulations, or they would otherwise be subject to penalties.

3. The actual specific measures taken by China to effect its regulatory policies include what is referred to as a "system of self-discipline". This system has a long history in China and has been well known to, and complied with by, Chinese companies. Self-discipline does not mean complete voluntariness or self-conduct.

In effect, self-discipline refers to a system of regulation under the supervision of a designated agency acting on behalf of the Chinese government. Under this regulatory system, the parties involved consult with each other to reach consensus on coordinated activities for the purpose of reaching the objectives and serving the interest as set forth under Chinese laws and policies. Persons engaged in such required self-discipline are well aware that they are subject to penalties for failure to participate in such coordination, or for non-compliance with self-discipline, including forfeiting their export right.

4. Vitamin C falls into the category of products subject to the above-mentioned regulation. During the relevant period in the present case, the Ministry required vitamin C exporting companies to coordinate among themselves on export price and production volume in compliance with China's relevant rules and regulations in order to maintain orderly export, safeguard the interests of the country as a whole and avoid self-destructive competition.

5. The Ministry authorized and instructed the China Chamber of Commerce of Medicines & Health Products Importers & Exporters (the "Chamber") and its Vitamin C Subcommittee to implement relevant policies related to the export of vitamin C products. Embodied in the Ministry's delegation of authority to the Chamber were industry regulatory functions and powers as well as necessary enforcement measures. Vitamin C exporters were thus subject to the regulation by the Chamber, including compliance with the Chamber's requirements of self-discipline, the very purpose of which was to coordinate each exporter's behavior. No vitamin C exporter could

ignore these policies, nor could they abstain from such coordination with regard to export price and production volume when asked to by the Chamber.

6. The self-disciplinary system of export coordination also includes meetings and discussions between and among the parties subject to the Chamber's direction and supervision, and reaching agreements among themselves on taking appropriate actions in the interest of the country as a whole. Participation in such discussions, taking a vote and conducting other similar activities to reach their final consensus constitutes an integral part of the self-discipline process. Vitamin C exporters must comply with the above procedures and the agreements reached in compliance with such procedures; otherwise, the Chamber would be required to exercise its power to penalize those who were in violation of such procedures and agreements.

7. The Ministry has read the report issued by plaintiffs' expert, Dr. Paula Stern. The Ministry believes that statements of representatives of the Ministry and other government agencies, with regard to China's market economy status, and remarks regarding Chinese companies setting price and production volume according to the principle of market demand, quoted by Dr. Stern were made in a different context -- one that had nothing to do with export price regulations -- and were *general descriptions* of the current status of China's market economy presented in a special context. These general descriptions are irrelevant to the present case and should not be deemed as explicit or implicit statements of China's abandonment of its limited regulatory policies over certain designated industries including the vitamin C industry,

or of China's waiver of its power to continue to regulate according to Chinese and international law. The Ministry believes that maintaining its regulation in a limited manner (such as its regulation over vitamin C export) is consistent with China's national goal of establishing a socialist market economy. As stated under Point 2 above, the adoption of government regulations over certain commodities (such as vitamin C) at a given stage in history serves the specific interests of China and is consistent with the trade policies of importing countries to protect and regulate relevant domestic industries. The regulations are implemented in a manner consistent with international law and custom and, during the process of implementation, have not been subject to challenge from the government of other countries or regions. China understands and believes that virtually all sovereign nations and regions (including the United States), proceeding from their own interests, have exercised various forms of government regulations over part of their private sector and certain industries. China's export regulations of vitamin C at issue in this case are no different.

Respectfully submitted,

Department of Treaty and Law

Minister of Commerce of the People's Republic of China

FOREIGN TRADE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, EFFECTIVE JULY 1, 2004

Foreign Trade Law of The People's Republic of China (2004)

Thursday, July 01, 2004 Posted: 21:20 BJT (20 GMT)
MOFCOM

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Chapter 1 General Provisions

Article 1 This Law is formulated with a view to expanding the opening to the outside world, developing foreign trade, maintaining foreign trade order, protecting the legitimate rights and interests of foreign trade dealers

and promoting the sound development of the socialist market economy.

Article 2 This Law applies to foreign trade and the protection of trade-related aspects of intellectual property rights. For the purposes of this Law, "foreign trade" refers to import and export of goods and technologies and the international trade in services.

Article 3 The authority responsible for foreign trade under the State Council is in charge of the administration of the foreign trade of the entire country pursuant to this Law.

Article 4 The State shall pursue a uniform foreign trade regime, encourage the development of foreign trade and maintain fair and free foreign trade order.

Article 5 The people's Republic of China shall, on the principle of equality and mutual benefit, promote and develop trade relations with other countries and regions, enter into or participate in such regional economic trade agreements as customs union agreement, free trade agreement and participate in regional economic organizations.

Article 6 The People's Republic of China shall, in accordance with the international treaties and agreements to which it is a contracting party or a participating party grant the other contracting parties or participating parties, or on the principle of reciprocity grant the other party most-favored-nation treatment or national treatment in the field of foreign trade.

Article 7 In the event that any country or region applies prohibitive, restrictive or other like measures on a

discriminatory basis against the People's Republic of China in respect of trade, the People's Republic of China may, as the case may be, take counter-measures against the country or region in question.

Chapter 2 Foreign Trade Dealers

Article 8 For the purposes of this Law, "foreign trade dealers" refers to legal persons, other organizations or individuals that have fulfilled the industrial and commercial registration or other practicing procedures in accordance with laws and engage in foreign trade dealings in compliance with this Law and other relevant laws and administrative regulations.

Article 9 Foreign trade dealers engaged in import and export of goods or technologies shall register with the authority responsible for foreign trade under the State Council or its authorized ·bodies unless laws, regulations and the authority responsible for foreign trade under the State Council do not so require. The specific measures for registration shall be laid down by the authority responsible for foreign trade under the State Council. Where foreign trade dealers fail to register as required, the Customs authority shall not process the procedures of declaration, examination and release for the imported and exported goods.

Article 10 The international trade in services shall be carried out in compliance with the provisions of this Law and either relevant laws and administrative regulations. The units engaged in foreign contract of construction project or foreign labor cooperation shall be equipped with corresponding eligibility or qualification. The specific

measures therefore shall be laid down by the State Council.

Article 11 The State may implement state trading on certain goods. The import and export of the goods subject to state trading shall be operated only by the authorized enterprises unless the state allows the import and export of certain quantities of the goods subject to state trading to be operated by the enterprises without authorization. The lists of the goods subject to state trading and the authorized enterprises shall be determined, adjusted and made public by the authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council. In the event of importation of the goods subject to state trading without authorization in violation of paragraph 1 of this Article, the Customs shall not grant rele[illegible]

Article 12 Foreign trade dealers may accept the authorization of others and conduct foreign trade as an agent within its scope of business.

Article 13 Foreign trade dealers shall, in accordance with the regulations laid down by the authority responsible for foreign trade under the State Council or other relevant authorities under the State Council in accordance with law, submit the documents and materials relevant to their foreign trade dealings to relevant authorities. The authorities concerned shall keep business secrets confidential for the providers thereof.

Chapter 3 Import and Export of Goods and Technologies

Article 14 The State permit free import and export of goods and technologies unless the laws or administrative regulations provide otherwise.

Article 15 The authority responsible for foreign trade under the State Council may, in accordance with the need to supervise import and export, implement automatic import and export licensing certain goods subject to free import and export and make public the list thereof. Where the consignee or the consigner of the imported or exported goods subject to automatic licensing submits the automatic licensing application before going through the Customs declaration procedures, the authority responsible for foreign trade under the State Council or its authorized authorities shall grant approval. In case of failure to accomplish automatic licensing procedures, the Customs shall not grant release. In the case of importing or exporting technologies subject to free import and export, the contracts thereof shall be registered with the authority responsible for foreign trade under the State Council or its authorized authorities.

Article 16 The State may restrict or prohibit the import or export of relevant goods and technologies for the following reasons that:

(1) the import or export needs to be restricted or prohibited in order to safeguard the state security, public interests or public morals,

(2) the import or export needs to be restricted or prohibited in order to protect the human health or security, the animals and plants life or health or the environment,

(3) the import or export needs to be restricted or prohibited in order to implement the measures relating to the importations and exportations of gold or silver,

(4) the export needs to be restricted or prohibited in the case of domestic shortage in supply or the effective protection of exhaustible natural resources,

(5) the export needs to be restricted in the case of the limited market capacity of the importing country or region,

(6) the export needs to be restricted in the case of the occurrence of serious confusion in the export operation order,

(7) the import needs to be restricted in order to establish or accelerate the establishment of a particular domestic industry,

(8) the restriction on the import of agricultural, animal husbandry or fishery products in any form is necessary,

(9) the import needs to be restricted in order to maintain the State's international financial status and the balance of international payment,

(10) the import or export needs to be restricted or prohibited as laws and administrative regulations so provide, or

(11) the import or export needs to be restricted or prohibited as the international treaties or agreements to which the state is a contracting party or a participating party so require.

Article 17 The State may, in the case of the import or export of the goods and technologies relating to fissionable and fissionable materials or the materials form which they are derived as well as the import or export relating to arms, ammunition and implements for war, take any measures as necessary to safeguard the state security. The State may, in the time of war or for the protection

of international peace and security, take any measures as necessary in respect of import or export of goods and technologies.

Article 18 The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 16 and 17 in this Law, establish, adjust and publish the list of goods and technologies of which the import or export is subject to restrictions or prohibitions. The authority responsible for foreign trade under the State Council independently or in conjunction with other relevant authorities under the State Council may, with the approval from the State Council, decide, on a temporary basis, to impose restrictions or prohibitions on the import or export of goods and technologies not included in the list provided in the above paragraph within the meaning of Article 16 and Article 17 in this Law.

Article 19 Goods subject to import or export restriction shall be subject to quota and/or licensing control; technologies whose import or export is restricted shall be subject to licensing control. Import or export of any goods and technologies subject to quota and/or licensing control will be effected only with the approval of the authorities responsible for foreign trade under the State Council or the joint approval of the foregoing authorities and other relevant authorities under the State Council in compliance with the provisions of the State Council. Certain imported goods may be subject to tariff rate quota control.

Article 20 Quotas and tariff rate quotas of the imported and exported goods shall be distributed on the principles

of transparency, equity, impartiality and efficiency by the authority responsible for foreign trade under the State Council or the relevant authorities under the State Council within their respective responsibilities. Specific measures for the distribution shall be laid down by the State Council.

Article 21 The state shall implement the commodity assessment system in a uniform manner and in accordance with the provisions of relevant laws and administrative regulations carry out certification, inspection or quarantine in respect of imported and exported commodities.

Article 22 The state shall implement origin management in respect of the imported and exported goods. Specific measures therefore shall be laid down by the State Council.

Article 23 Where the import or export of cultural relics, wildlife animals, plants and the products thereof are prohibited or restricted by other laws or administrative regulations, the provisions of relevant laws and regulations shall be observed.

Chapter 4 International Trade in Services

Article 24 In respect of international trade in services, the People's Republic of China shall, in accordance with the commitments made in international treaties or agreements to which the People's Republic of China is a contracting party or a participating party, grant the other contracting parties or participating parties market access and national treatment.

Article 25 The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, pursuant to provisions of this Law and other laws and administrative regulations, administer the international trade in services.

Article 26 The State may impose restrictions and prohibitions on the international trade in services for the reasons that:

(1) restrictions or prohibitions are needed to safeguard the state security, public interests or public morals,

(2) restrictions or prohibitions are needed to protect the human health or security, the animals and plants life or health or the environment,

(3) restrictions are needed to establish or accelerate the establishment of a particular domestic service industry,

(4) restrictions are needed to maintain the balance of international payment of the state,

(5) restrictions or prohibitions are needed as laws and administrative regulations so provide, or

(6) restrictions or prohibitions are needed as the international treaties or agreements to which the state is a contracting party or a participating party so require.

Article 27 The State may, in the case of military-related international trade in services, as well as the international trade in services relating to fissionable and fissionable materials or the materials form which they are derived, take any measures as necessary to safeguard the state security. The state may, in the time of war or for the

protection of international peace and security, take any measures as necessary in respect of international trade in services.

Article 28 The authority responsible for foreign trade under the State Council in conjunction with other relevant authorities under the State Council shall, in accordance with the provisions of Articles 26 and 27 in this Law and other relevant laws and administrative regulations, determine, adjust and publish the market access list of international trade in services.

Chapter 5 Protection of Trade-Related Aspects of Intellectual Property Rights

Article 29 The State shall, in accordance with laws and administrative regulations relevant to intellectual property rights, protect trade-related aspects of intellectual property rights. Where the imported goods infringe intellectual property rights and impair foreign trade order, the authority responsible for foreign trade under the State Council may take such measures as prohibiting the import of the relevant goods from being produced or sold by the infringe within a certain period.

Article 30 Where the intellectual property right owner is involved in any one of such practices as preventing the lincesee form challenging the validity of the intellectual property right in the licensing contract, conducting coercive package licensing or incorporating exclusive grantback conditions in the licensing contract, which impairs the fair competition order of foreign trade, the authority responsible for foreign trade under the State Council may take measures as necessary to eliminate such impairment.

Article 31 If other countries or regions do not grant the legal persons, other organizations and individual from the People's Republic of China national treatment in respect of the protection of intellectual property rights, or cannot provide adequate and effective protection of intellectual property rights for the goods, technologies or services from the People's Republic of China, the authority responsible for foreign trade under the State Council may, in accordance with the provisions of this Law and other relevant laws and administrative regulations and the international treaties or agreements to which the People's Republic of China is a contracting party or a participating party, take measures as necessary in respect of the trade with the country or region in question.

Chapter 6 Foreign Trade Order

Article 32 In foreign trade dealings, monopolistic behavior in violation of relevant provisions of anti-monopoly laws and administrative regulations is not allowed. In foreign trade dealings, any monopolistic behavior with the effect of eliminating market fair competition shall be disposed of in accordance with relevant provisions of anti-monopoly laws and administrative regulations. Where any activities in violation of laws set forth in the former paragraph occur with the effect of impairing foreign trade order, the authority responsible for foreign trade under the State Council may take measures as necessary to eliminate the impairment.

Article 33 In foreign trade activities, such unfair competition activities as selling the products at unreasonable low prices, colluding with each other in a

tender, producing and releasing false advertisements and conducting commercial bribery and others like are not allowed. Any unfair competitive practice conducted in the foreign trade activities shall be disposed of in accordance with relevant laws and administrative regulations against unfair competition. Where any illegal activities as provided in the previous paragraph occur with the effect of impairing foreign trade order, the authority responsible for foreign trade under the State Council may take such measures as prohibiting the dealer from importing and exporting relevant goods and technologies to eliminate the impairment.

Article 34 The following practices are not allowed in foreign trade activities:

(1) forgery, distortion of origin marks of the imported and exported goods; forgery, distortion or trading of origin certificates of imported or exported goods, import and export licenses, certificates of import and export quota or any other certificate for import and export;

(2) defrauding the State of the refunded tax on exports;

(3) smuggling;

(4) evading certification, inspection and quarantine inspection as provided by laws and administrative regulations;

(5) other activities in violation of the provisions of laws and administrative regulations.

Article 35 In foreign trade activities, foreign trade dealers shall act in compliance with relevant provisions of foreign exchange administration of the state.

Article 36 The authority responsible for foreign trade under the State Council may give a notice to the public the activities in violation of this Law for impairing foreign trade order.

Chapter 7 Foreign Trade Investigation

Article 37 In order to maintain the foreign trade order, the authority responsible for foreign trade under the State Council may carry out investigations on the following matters in accordance with laws and administrative regulations at its disposal or in conjunction with other relevant administrations:

(1) the impact on the domestic industry as well as the competitive strengths of import and export of goods, import and export of technologies and international trade in services;

(2) trade barriers of relevant countries or regions;

(3) matters needed to be investigated on in order to determine whether such foreign trade remedies as anti-dumping, countervailing or safeguard measures shall be taken;

(4) activities that circumvent foreign trade remedies;

(5) matters in relation to state security in foreign trade;

(6) matters needed to be investigated on in order to enforce the provisions of Articles 7, 29(2), 30, 31, 32(3) and 33(3).

(7) Other matters which may have impact on foreign trade order and need to be investigated on.

Article 38 The authority responsible for foreign trade shall give a notice in case of initiating foreign trade

investigations. The investigation may take the form of questionnaires in writing, hearings, on-the-spot investigations, entrusted investigations and otherwise. The authority responsible for foreign trade under the State Council shall, on the basis of the findings, submit investigation reports or make determinations and give public notices.

Article 39 Relevant units and individuals shall provide the foreign trade investigation with cooperation and assistance. The authority in charge of foreign trade and other authorities under the State Council as well as their staff members shall have the obligation to keep the state secrets and business secrets known to them confidential during foreign trade investigations.

Chapter 8 Foreign Trade Remedies

Article 40 The State may take appropriate foreign trade remedies on the basis of the findings of foreign trade investigation.

Article 41 Where a product from other countries or regions is dumped into the domestic market at a price less than its normal value and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of domestic industries, the State may take anti-dumping measures to eliminate or mitigate such injury, threat of injury or retardation.

Article 42 Where the export of a product from other countries or regions to the market of a third country causes or threatens to cause material injury to the established domestic industries, or materially retards

the establishment of domestic industries, the authority responsible for foreign trade under the State Council may, on the request of the domestic industries, carry out consultations with the government of that third country and require it to take appropriate measures.

Article 43 Where an imported product has directly or indirectly accepts any specific subsidiary granted by the exporting country or region and under such conditions as to cause or threaten to cause material injury to the established domestic industries, or materially retards the establishment of related domestic industries, the State may take countervailing measures to eliminate or mitigate such injury or threat of injury or retardation.

Article 44 Where a product is being imported in substantially increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products, the State may take safeguard measures as necessary to eliminate or mitigate such injury or threat of injury and provide the industry concerned with necessary support.

Article 45 Where the increase of services provided to China by the service suppliers from other countries or regions causes or threatens to cause injury to the domestic industries that provide like or directly competitive services, the State may take remedies as necessary to eliminate or mitigate such injury or threat of injury and provide such industry with necessary support.

Article 46 Where the restriction imposed by a third country on the import of a certain product causes the increase in

quantities of such product imported into the domestic market and under such conditions as to cause or threaten to cause injury to the established domestic industry, or materially retards the establishment of related domestic Industries, the state may take remedies as necessary to restrict the import of the product concerned.

Article 4 7 Where any country or region that enters into or participate in the economic and trade treaties or agreements with the People's Republic of China deprives the People's Republic of China of or impairs her interests under such treaties or agreements, or hinders realization of the object of such treaties or agreements, the People's Republic of China has the right to request the relevant country or region to take appropriate remedies and has the right to suspend or terminate its performance of relevant obligations in compliance with relevant treaties and agreements.

Article 48 The authority responsible for foreign trade under the State Council shall carry out bilateral or multilateral foreign trade consultations, negotiations and settle disputes in accordance with this Law and other relevant laws.

Article 49 The authority responsible for foreign trade under the State Council and the other relevant authorities under the State Council shall establish the pre-warning and emergency system for import and export of goods, import and export of technologies and international trade in services so as to cope with the unexpected and unusual situations in foreign trade for the purpose of safeguarding the economic Security of the State.

Article 50 The State may take necessary anti-circumvention measures against the activities circumventing the foreign trade remedies provided under this Law.

Chapter 9 Foreign Trade Promotion

Article 51 The State formulates foreign trade expansion strategies, establishes and improves the foreign trade promotion mechanism.

Article 52 The State shall establish and improve financial institutions for foreign trade and establish funds for foreign trade development and risk as the development of foreign trade requires.

Article 53 The State may take such measures as import and export credit, export credit insurance, export tax refund and other foreign trade promotion measures for the purpose of developing foreign trade.

Article 54 The State establishes the foreign trade public information service system, providing foreign trade dealers and the public with information services.

Article 55 The State shall take measures to encourage foreign trade dealer to explore international market, and develop foreign trade by adopting various forms such as foreign investment, foreign contract of construction project and foreign labor cooperation.

Article 56 Foreign trade dealers may organize or participate in relevant associations or chambers of commerce for importers and exporters in accordance with the law. Relevant associations or chambers of commerce shall abide by relevant laws and, regulations, provide in compliance with their articles of association their members with foreign trade related services in aspects

of manufacturing, marketing, information and training, play a positive role in coordination and self-discipline, submit applications for relevant foreign trade remedies, safeguard the interests of their members and the industry, report to the relevant authorities the suggestions of their members with respect to foreign trade promotion, and actively promote foreign trade.

Article 57 The organization for the promotion of international trade in China shall, in accordance with its articles of association, engage in developing foreign trade relations, sponsoring exhibitions, providing information and advisory services and carry out other foreign trade promotion activities.

Article 58 The State shall support and facilitate the foreign trade carried out by small and medium-sized enterprises with small or middle scale.

Article 59 The State shall support and promote the development of foreign trade in national autonomous areas and economically under-developed areas.

Chapter 10 Legal Liabilities

Article 60 Anyone who imports or exports the goods subject to the state trading without authorization in violation of Article 11 of this Law may be imposed on a fine of not more than RMB 50,000 Yuan by the authority responsible for foreign trade under the State Council or other authorities under the State Council; if the circumstances are serious, the aforesaid authorities may refuse to accept the application submitted by the trade dealer in violation of laws for carrying out imports or

exports of the goods subject to state trading within three years from the date the administrative sanction decision takes effect or may withdraw the granted authorization of import and export of goods subject to state trading.

Article 61 Anyone who imports and exports the goods of which import and export is prohibited, or imports and exports the goods of which import and export is restricted without authorization shall be disposed of and punished by the Customs in accordance with relevant laws and administrative regulations; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. Anyone who imports and exports the technologies of which import and export is prohibited, or imports and exports the technologies of which import and export is restricted without authorization shall be disposed of and punished in accordance with relevant laws and regulations; Where no laws or regulations are available to apply to such activities, the authority responsible for foreign trade under the State Council shall order him to make a rectification, confiscate the illegal proceeds and impose a fine from one to five times the amount of the illegal gains. If there are no illegal proceeds or the illegal proceeds are less than RMB 10,000 Yuan, a fine from RMB, 10,000 Yuan to RMB 50,000 Yuan shall be imposed; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. The authority responsible for foreign trade under the State Council and other relevant authorities under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in paragraphs 1 and 2 of this Article,

refuse the applications for import and export quotas or licenses submitted by the law-breaker, or prohibit the law-breaker from engaging in the import and export of relevant goods and technologies within a period from one to three years.

Article 62 Anyone who engages in the international trade in services subject to prohibition or engages in international trade in services subject to restriction without authorization shall be disposed of and punished in accordance relevant laws and administrative regulations; Where no laws or regulations are available to apply to such activities, the authority responsible for foreign trade under the State Council shall order him to make a rectification, confiscate the illegal gains and impose a fine from one to five times the amount of the illegal proceeds. If there are no illegal proceeds or the illegal proceeds are less than RMB 10,000 Yuan, a fine from RMB 10,000 Yuan to RMB 50,000 Yuan shall be imposed; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. The authority responsible for foreign trade under the State Council may, from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in the previous paragraph of this Article, prohibit the law-breaker from engaging in relevant international trade in services within a period from one to three years.

Article 63 Anyone who acts in violation of the provision of Article 34 of this Law shall be punished in accordance with relevant laws and administrative regulations; if the case constitutes a crime, he shall be prosecuted for criminal liabilities in accordance with the law. The authority responsible for foreign trade under the State Council may,

from the date when the administrative sanction decision or criminal penalty judgment takes effect as provided in the previous paragraph of this Article, prohibit the law-breaker from engaging in relevant foreign trade activities within a period from one to three years.

Article 64 Where a foreign trade dealer is prohibited from engaging in the relevant foreign trade activities in accordance with Articles 61-63, within the period of prohibition the Customs authority shall not grant release to the relevant imported or exported goods of that foreign trade dealer in accordance with the decision made by the authority responsible for foreign trade under the State Council, and the foreign exchange administration or designated foreign exchange banks shall not process the procedures of selling and purchasing foreign exchange.

Article 65 Any staff member serving in the authority responsible for foreign trade in accordance with this Law who neglects his duty, engages in malpractices for personal gains or abuses his power, shall be prosecuted for criminal liabilities if the case constitutes a crime, or shall be subject to administrative sanctions if the case dose not constitute a crime in accordance with the law. Any staff member serving in the authority responsible for foreign trade in accordance with this Law, who extorts property from others with job convenience, or illegally accepts others' property and seeks advantages for them in return shall be prosecuted for criminal liabilities if the case constitutes a crime, or shall be subject to administrative sanctions if the case does not constitute a crime in accordance with the law.

Article 66 The parties in the foreign trade activities may apply for an administrative reconsideration or bring an administrative lawsuit before a people's court in case of dissatisfaction with a specific administrative act by the authority responsible for foreign trade administration in accordance with this Law.

Chapter 11 Supplementary Provisions

Article 67 Where other laws or administrative regulations provide otherwise in respect of foreign trade administration of military supplies, fissionable and fissionable materials or the materials form which they are derived and import and export administration of cultural products, the provisions thereof shall be observed.

Article 68 The State applies flexible measures, provides preferential conditions and conveniences to the trade between the towns on the frontier and those towns of neighboring countries on frontier as well as trade among border residents. Specific measures therefore shall be laid down by the State Council.

Article 69 This Law shall not apply to the separate customs territories of the People's Republic of China.

Article 70 This Law shall come into force as of July 1, 2004.

(All information published in this website is authentic in Chinese. English is provided for reference only.)

Announcement Measures on Behavior Prohibited by Laws and Regulations of Foreign Trade Operator

Thursday, September 15, 2005 Posted: 09:35 BJT (0135 GMT) CAITEC

Article 1, Announcement Measures is formulated in accordance with Foreign Trade Law of PRC (hereinafter referred to as Foreign Trade Law) and other related laws and regulations, so that the impartial and free foreign trade orders could be maintained.

Article 2, Announcement Measures is established for the foreign trade operators and their behaviors, in foreign trade or relevant intelligence property protection, which violate related laws and regulations, imperil foreign trade orders and act against Foreign Trade Law.

Article 3, The foreign trade operator mentioned in Announcement Measures indicates the juridical person, other organization or individual dealing with foreign trade activities, with legal business registration or other working license and acting in accordance with Foreign Trade Law and related administrative regulations.

Article 4, Ministry of Commerce is in charge of the communication, correspondence and collection of the information on operators and behavior prohibited by laws and regulations, which shall be proclaimed to the public through official website and appointed nationwide publications. Ministry of Commerce and local responsible commercial sectors shall establish information exchange and correspondence mechanism together with sectors concerned customs, taxation, quality inspection and

quarantine, foreign exchange management, public security and court.

Article 5, The foreign trade operators and their behaviors prohibited by laws and regulations indicate the following behavior happened in the foreign trade activities, which has been dealt with, punished or charged with criminal responsibility in accordance with relevant laws and administrative regulations.

1. Activity that concern importing and exporting prohibited commodities or technology, or importing and exporting limited commodities or technology without permission.

2. Activity that concern violation of state-run trade administrative regulation by presumptuously importing and exporting commodity that under state-run trade administration without authorization.

3. Activity that concern prohibited international service trade or engage limited international service trade without permission.

4. Activity that violate intelligence property law and compromise foreign trade order.

5. Activity that concern monopolization and behave against anti-monopolization law and regulations.

6. Activity that concern illegitimate competition by conducting improper low-price sale, bid collusion, false advertisement or business bribery.

7. Activity that concern forging and falsifying the mark of place of origin, forging, falsifying and tra...

the mark of place of origin, import and export license, import and export quota certificate or other certification document of imported and exported commodity.

8. Activity that concern export rebate cheating.

9. Smuggle.

10. Shirking laws, authentication, inspection and quarantine set by administrative regulation.

11. Activity that concern violation of related foreign administrative regulation.

12. Other activity that concern violation of laws and administrative regulations, or compromise foreign trade order.

Article 6, Information announcement of behavior prohibited by laws and regulations include:

1. Title, organization code, habitation, business location, artificial person and enrollment number of trade registration of the operator.

2. Behavior that violate law and regulations.

3. Content of transaction, punishment, and criminal responsibility according to law and administrative regulations.

Article 7, If the foreign trade operator that has been punished or charged with criminal responsibility fall into the following situations, the announcement could be cancelled or delayed.

1. Administrative reconsideration or lawsuit on administrative punishment is raised in the valid duration

set by law, but no final arbitration or decision has been made.

2. Concerning information that can not be revealed, such as national security, business privacy, etc.

Article 8, Ministry of Commerce shall announce behavior and operator that compromise foreign trade orders based on principles of impartiality and justice.

Article 9, Staff in charge of announcement shall bear responsibility in case dereliction of duty happens and result in negative effects.

Article 10, Ministry of Commerce reserves the right to explain this Announcement Measures.

Article 11, Announcement Measures on Behavior Prohibited by Laws and Regulations of Foreign Trade Operator shall take effect as of September 1, 2005.

(All information published in this website is authentic in Chinese. English is provided for reference only.)

SELECTED EXHIBITS TO THE DECLARATION OF JENNIFER MILICI IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR DETERMINATION OF FOREIGN LAW AND ENTRY OF JUDGMENT, FILED NOVEMBER 23, 2009

EXCERPTED PORTION OF THE TRANSCRIPT OF THE DEPOSITION OF WANG RENZHI OF NORTHEAST PHARMACEUTICAL CO. LTD., FILED JULY 17, 2008

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MDL NO. 1738

IN RE:

VITAMIN C ANTITRUST LITIGATION

Thursday, July 17, 2008

9:05 a.m.

Videotaped Deposition of WANG RENZHI, held at the offices of Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, New York 10166, pursuant to Notice, before Otis Davis, a Notary Public of the State of New York.

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[72]Q. The minimum export price in 2005 was $3.35 per kilogram for Vitamin C, correct?

A. Right.

Q. And Exhibit 161 indicates that companies were selling Vitamin C for $2.80 to $2.90, correct?

[73]MR. LAPATINE: Are you asking him if that's what the document says, or if that's what happened?

MR. AGRAWAL: No, I'm asking.

MR. LAPATINE: Because you referenced the document.

Q. Do you have any reason to contest the accuracy of what is indicated Exhibit 161, companies were selling Vitamin C at $2.80 to $2.90?

A. This was the actual market price of Vitamin C in the second half of 2005.

Q. Was NEPG and the other three major manufacturers of Vitamin C in China selling at that market price in the second half of 2005?

A. The majority of them, yes.

Q. Was NEPG ever penalized for selling Vitamin C below the $3.35 minimum export price?

A. This is exactly what the Chamber of Commerce -- this is a problem that it had to resolve. It was a [74] special -- very abnormal situation, a very special situation, extraordinary situation.

So the Chamber of Commerce was trying by all kinds of means to change the situation. This price on the international market at the time was conducive to counter antidumping, but the Vitamin C manufacturers, they each have a big inventory. In order to survive, they have to sell part of it. The Chamber of Commerce understood that. That's why it took a flexible attitude in handling such.

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EXCERPTED PORTION OF THE TRANSCRIPT OF THE DEPOSITION OF WANG QI OF JIANGSU JIANGSHAN PHARMACEUTICAL CO., JULY 2, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

MDL NO. 1738

IN RE:

VITAMIN C ANTITRUST LITIGATION.

July 2, 2008
10:07 a.m.

Videotaped Deposition of WANG QI, taken by Plaintiffs, pursuant to Notice, at the offices of Heller Ehrman LLP, Seven Times Square, New York, New York, before ERIC J. FINZ, a Shorthand Reporter and Notary Public within and for the State of New York.

***

[265]Q. Underneath the chart you have an analysis and two items there. And in the second item you report that the export price at its lowest level was $2.50 to $2.60 per kilogram; is that right?

A. Yes, that's what's written here.

Q. So during 2006, there was a period in which the Chinese manufacturers were charging their customers much less than $3.35 per kilogram; is that right?

THE INTERPRETER: $3.35?

[266]MR. ISAACSON: Right.

A. I should say that -- I should say that there was such a period in time in which the market price was lower than the floor price.

Q. And did you accomplish that by paying customers refunds or commissions?

A. Yes, I think in a number -- a handful of cases that that happened.

Q. Well, it happened enough to bring the market price down from $3.35 to at least $2.60 per kilogram; isn't that right?

MR. GOLDSTEIN: Object to the form.

A. I don't understand this question. Can you repeat?

MR. ISAACSON: I'll just move forward.

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REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE ADMINISTRATION OF THE IMPORT AND EXPORT OF GOODS, EFFECTIVE JANUARY 1, 2002

Decree of the State Council of the People's Republic of China

No. 332

The Regulations of the People's Republic of China on the Administration of the Import and Export of Goods has been passed at the forty-sixth executive meeting of the State Council on October 31, 200 I and is hereby promulgated for implementation as of January 1, 2002.

Premier of the State Council: Zhu Rongji

December 10, 2001

Regulations of the People's Republic of China on the Administration of the Import and Export of Goods

Chapter I General Provisions

Article 1 The present regulations have been enacted according to the relevant provisions of the Foreign Trade Law of the People's Republic of China (hereinafter referred to as the "Foreign Trade Law") for the purpose of standardizing the administration of the import and export of goods, maintaining the order of import and export of goods and promoting the healthy development of foreign trade.

Article 2 The present regulations shall be observed in regards to the importation of goods within the customs boundary of the People's Republic of China or the exportation of goods beyond the customs boundary of the People's Republic of China.

Article 3 The State exercises uniform administration over the import and export of goods.

Article 4 The State allows the free importation and exportation of goods and maintains the fairness and orderliness of the import and export of goods according to the law. Unless it is clearly provided in laws or administrative regulations to forbid or restrict the import or export of goods, no entity or individual may establish or maintain prohibitive or restrictive measures over the import or export of goods.

Article 5 The People's Republic of China, in terms of the import and export of goods, grants the most-favored nation treatment or national treatment to other contracting parties or member states to the international treaties or pacts that it has concluded or acceded to, or grants the most-favored-nation treatment or national treatment to its counterparts according to the principle of mutual benefit and reciprocity.

Article 6 Any country or region that takes prohibitive or restrictive measures of a discriminative nature or other similar measures against the People's Republic of China in terms of the import or export of goods, it may, according to the specific situations, take corresponding measures against such country or region.

Article 7 The department of the State Council in charge of foreign trade and economic cooperation (hereinafter referred to as the foreign trade department of the State Council) takes charge of the import and export of goods within the whole country according to the provisions of the Foreign Trade Law and the present Regulations.

The relevant departments of the State Council shall, on the basis of the functions and duties as determined by the State Council, be responsible for the administration of the import and export of goods according to the provisions of the present Regulations.

Chapter II Administration of Import of Goods

Section I Goods Prohibited from Importation

Article 8 In any of the circumstances as provided in Article 17 of the Foreign Trade Law, the goods concerned shall be prohibited from importation. If there are relevant provisions in other laws or regulations on prohibiting the importation of goods, such provisions shall be abided by.

The list of goods prohibited from importation shall be formulated, adjusted and promulgated by the foreign trade department of the State Council in collaboration with other relevant departments of the State Council.

Article 9 No goods that are prohibited from importation may be imported.

Section II Goods Restricted in Importation

Article 10 In any of the circumstances as provided in Clauses 1, 4, 5, 6, and 7 of Article 16 of the Foreign Trade Law, the goods concerned shall be restricted in importation. Where there are provisions in other laws or regulations on limiting the importation of goods, such provisions shall be abided by.

The list of goods restricted in importation shall be formulated, adjusted and promulgated by the foreign trade department of the State Council in collaboration with other relevant departments of the State Council.

The list of goods restricted in importation shall be promulgated at least 21 days prior to the implementation thereof; where the circumstances are urgent, it shall be promulgated at no later than the day of implementation.

Article 11 Where there are quantitative limits set by the state on the goods restricted in importation, the goods shall be subject to the administration of quotas, and other goods restricted in importation shall be subject to the administration of licenses.

When importing the goods subject to the administration of tariff quotas, the provisions of Section IV of this Chapter shall be followed.

Article 12 The goods restricted in importation that are under the administration of quotas shall be subject to the administration of the foreign trade department of the State Council and the relevant economic administrative departments of the State Council (hereinafter collectively referred to as administrative depatments of import quotas) on the basis of the functions and duties of these departments as provided by the State Council.

Article 13 For the goods restricted in importation that are under the administration of quotas, the administrative departments of import quotas shall promulgate the total amount of import quotas for the next year at no later than July 31 of each year.

An applicant of quotas shall apply to the administrative departments of import quotas for the next year between August 1 and 31 of each year.

The administrative departments of import quotas shall allocate the quotas for the next year to the quota applicants before October 31 of each year.

The administrative departments of import quotas may, where it is necessary, make adjustments to the total amount of the year and promulgate it at 21 days prior to its implementation.

Article 14 The quotas may be allocated according to the principle of uniform handling of all applications.

Article 15 Where the quotas are allocated according to the principle of uniform handling of all applications, the administrative departments of import quotas shall decide whether to grant quotas or not within 60 days after the prescribed deadline for filing applications.

Article 16 When allocating quotas, the administrative departments of import quotas shall take the following factors into consideration:

1. The performances of the applicant in import;

2. Whether the quotas in the past have been fully used;

3. The production capacity, operational scale and the sales situation of the applicant;

4. The applications filed by new import business operators;

5. The quantity of quotas applied; and

6. Other factors that need to be considered.

Article 17 An import business operator shall present the quotas certificate issued by the administrative departments of import quotas to the customs offices for handling the formalities of customs declaration and examination. The relevant economic administrative departments of the State Council shall report such information as the total amount of quotas of the year, the

plans of allocation, the issuance of quota certificates etc. to the foreign trade department of the State Council for archivist purposes.

Article 18 A holder of quotas who has not used up its quotas for the year shall return the unused quotas to the administrative departments of import quotas prior to September 1 of the same year. In case one fails to return the unused quotas and fails to use them up by the end of the year, the administrative departments of import quotas may make corresponding deductions to the quotas of the holder for the next year.

Article 19 For the goods restricted in importation that are subject to the administration of licenses, the import business operators shall file applications to the foreign trade department of the State Council or relevant departments of the State Council (hereinafter collectively referred to as the administrative departments of import licenses). The administrative departments of import licenses shall decide whether to grant a license or not within 30 days of receiving the application.

The import business operators shall present the import license issued by the administrative departments of import quotas to the customs office for handling the formalities of customs declaration and examination.

The term "import license" as mentioned in the preceding paragraph shall refer to the various kinds of certificates and documents that are of import nature as stipulated in laws and administrative regulations.

Article 20 The administrative departments of import quotas and the administrative departments of export licenses shall, on the basis of the provisions of the present

Regulations, formulate specific administrative measures so as to clarify the qualifications of the applicant, the departments for accepting applications, the principles and procedures of reviewing applications etc. and shall promulgate the measures prior to their implementation.

The department for accepting applications shall, as a general rule, be one department.

The documents requested by the administrative departments of import quotas and the administrative departments of import licenses for submission shall be limited to those documents and materials that are necessary for effecting the administration and the departments may not refuse to accept the applications under the pretext of trifle, immaterial mistakes or errors.

Section III Goods Subject to Free Importation

Article 21 The goods subject to free importation shall not be limited.

Article 22 The foreign trade department of the State Council and the relevant economic administrative departments of the State Council may, on the basis of the necessity for monitoring the importation of goods, exercise automatic import license administration over some of the goods subject to free importation according to the functions and duties determined by the State Council.

The list of goods that are under automatic import license administration shall be promulgated at no later than 21 days prior to its implementation.

Article 23 The import of goods that are under automatic import license administration shall be allowed.

Article 24 When importing the goods that are under automatic import license administration, the import business operators shall, prior to handling the formalities of customs declaration, file an application to the foreign trade department of the State Council or the relevant economic administrative departments of the State Council for automatic import licenses.

The foreign trade department of the State Council or the relevant economic administrative departments of the State Council shall issue automatic import licenses immediately after receiving the applications; if the circumstances are special, the time frame shall be no longer than 10 days.

The import business operators shall present the automatic import license issued by the foreign trade department of the State Council or the relevant economic administrative departments of the State Council to the customs offices for handling the formalities of customs declaration.

Section IV Goods under the Administration of Tariff Quotas

Article 25 The list of goods that are under the administration of tariff quotas shall be formulated, adjusted and promulgated by the foreign trade department of the State Council in collaboration with the relevant economic administrative departments of the State Council.

Article 26 For the goods imported under the tariff quotas, the tariffs shall be levied according to the rates within the quotas; for the goods imported beyond the tariff quotas, the tariffs shall be levied according to the rates beyond the quotas.

Article 27 The administrative departments of import quotas shall publicize the total amount of quotas for the next year between September 15 and October 14 of each year.

An applicant for quotas shall file its applications to the administrative departments of import quotas between October 15 and October 30 of each year.

Article 28 The tariff quotas may be allocated according to the principle of uniform handling of all applications.

Article 29 Where the tariff quotas are allocated according to the principle of uniform handling of all applications, the administrative department of import quotas shall decide whether to grant quotas or not before December 31 of each year.

Article 30 The import business operators shall present their certificate of tariff quotas issued by the administrative departments of import tariff quotas to the customs offices for handling the formalities of customs declaration and inspection of the goods under the tariff quotas.

The relevant economic administrative departments of the State Council shall submit in a timely manner such information as the total amount of tariff quotas for the year, the plans of allocation and the issuance of certificates of tariff quotas etc. to the foreign trade department of the State Council for archivist purposes.

Article 31 A holder of tariff quotas who has not used up its quotas for the year shall return the unused quotas to the administrative departments of import quotas prior to September 15 of the year. In case it fails to return the unused quotas and fails to use them up by the end of the

year, the administrative departments of import quotas may make corresponding deductions to the quotas of the holder for the next year.

Article 32 The administrative departments of import quotas shall, on the basis of the provisions of the present Regulations, formulate specific measures of administration so as to clarify the qualifications of the applicant, the departments for accepting applications, the principles and procedures of reviewing applications etc. and shall promulgate the measures prior to their implementation.

The department for accepting applications shall, as a general rule, be one department.

The documents requested by the administrative departments of import quotas for submission shall be limited to those documents and materials that are necessary for effecting the administration and the departments may not refuse to accept the applications under the pretext of trifle, immaterial mistakes or errors.

Chapter III Administration of the Export of Goods

Section I Goods Prohibited from Exportation

Article 33 In any of the circumstances as provided in Article 17 of the Foreign Trade Law, the goods concerned shall be prohibited from exportation. If there are relevant provisions in other laws or regulations on prohibiting the exp01iation of goods, such provisions shall be abided by.

The list of goods prohibited from exportation shall be formulated, adjusted and promulgated by the foreign trade department of the State Council in collaboration with other relevant departments of the State Council.

Article 34 No goods that are prohibited from exportation may be exported.

Section II Goods Restricted in Exportation

Article 35 In any of the circumstances as provided in Clauses 1, 2, 3, and 7 of Article 16 of the Foreign Trade Law, the goods concerned shall be restricted in exportation. Where there are provisions in other laws or regulations on limiting the exportation of goods, such provisions shall be abided by.

The list of goods restricted in exp01tation shall be formulated, adjusted and promulgated by the foreign trade department of the State Council in collaboration with other relevant departments of the State Council.

The list of goods restricted in exportation shall be promulgated at least 21 days prior to the implementation thereof; where the circumstances are urgent, it shall be promulgated at no later than the day of implementation.

Article 36 Where there are quantitative limits set by the state on the goods restricted in exportation, the goods shall be subject to the administration of quotas, and other goods restricted in exportation shall be subject to the administration of licenses.

Article 37 The goods restricted in exportation that are under the administration of quotas shall be subject to the administration of the foreign trade department of the State Council and the relevant economic administrative departments of the State Council (hereinafter collectively referred to as administrative departments of export quotas) on the basis of the functions and duties as provided by the State Council.

Article 38 For the goods restricted in exportation that are under the administration of quotas, the administrative departments of export quotas shall promulgate the total amount of export quotas for the next year prior to October 31 of each year.

An applicant of quotas shall apply to the administrative departments of export quotas for the next year between November 1 and 15 of each year.

The administrative departments of export quotas shall allocate the quotas for the next year to the quota applicants before December 15 of each year.

Article 39 The quotas may be allocated directly or by way of invitation for bids.

Article 40 The administrative departments of export quotas shall decide whether to grant quotas within 30 days of receiving the applications and at no later than December 15 of the current year.

Article 41 The export business operators shall present the certificate of quotas issued by the administrative department of export quotas to the customs offices for handling the formalities of customs declaration and examination.

The relevant economic administrative departments of the State Council shall submit such information as the total amount of quotas for the year, the plans for allocation and the issuance of certificates of quotas etc. to the foreign trade department of the State Council for archivist purposes.

Article 42 A holder of quotas who has not used up its quotas for the year shall return the unused quotas to the

administrative departments of export quotas prior to October 31 of the current year. In case it fails to return the unused quotas and fails to use them up by the end of the current year, the administrative departments of export quotas may make corresponding deductions to the quotas of the holder for the next year.

Article 43 For the goods restricted in exportation that are subject to the administration of licenses, the export business operators shall file applications to the foreign trade department of the State Council or relevant departments of the State Council (hereinafter collectively referred to as the administrative departments of export licenses). The administrative departments of export licenses shall decide whether to grant a license or not within 30 days of receiving the application.

The import business operators shall present the export license issued by the administrative departments of export quotas to the customs office for handling the formalities of customs declaration and examination.

The term "export license" as mentioned in the preceding paragraph shall refer to the various kinds of certificates and documents that are of export nature as stipulated in laws and administrative regulations.

Article 44 The administrative departments of export quotas and the administrative departments of export licenses shall, on the basis of the provisions of the present Regulations, formulate specific administrative measures so as to clarify the qualifications of the applicant, the departments for accepting applications, the principles and procedures of reviewing applications etc. and shall promulgate the measures prior to their implementation.

The department for accepting applications shall, as a general rule, be one department.

The documents requested by the administrative departments of export quotas and the administrative departments of export licenses for submission shall be limited to those documents and materials that are necessary for effecting the administration and the departments may not refuse to accept the applications under the pretext of trifle, immaterial mistakes or errors.

Chapter IV State-run Trade and Designated Operations

Article 45 The state may administer the import and export of some goods by way of state-run trade.

The list of goods for import and export under the state-run trade administration shall be formulated, adjusted and promulgated by the foreign trade department of the State Council in collaboration with other relevant economic administrative departments of the State Council.

Article 46 The foreign trade department of the State Council and other relevant economic administrative departments of the State Council shall determine and publicize the list of state-run trade enterprises according to the functions and duties as determined by the State Council.

Article 47 For the goods that are subject to the state-run trade administration, the state may allow nonstate-run trade enterprises to import and export some of the goods.

Article 48 The state-run trade enterprises shall provide to the foreign trade department of the State Council on

the semi-annual basis such information as the prices for buying or selling the goods subject to the state-run trade administration, etc.

Article 49 The foreign trade department of the State Council may, upon the necessity for maintaining the operation order of import and export, exercise designated operational administration over some of the goods during certain periods.

The list of goods subject to the administration of designated operations shall be formulated, adjusted and promulgated by the State Council.

Article 50 The specific standard and procedures for determining the enterprises to engage in designated operations shall be promulgated by the foreign trade department of the State Council before implementation.

The list of enterprises to engage in designated operations shall be publicized by the foreign trade department of the State Council.

Article 51 Unless provided in Article 47 of the present Regulations, the enterprises or other organizations that have not been included in the list of state-run trade enterprises and enterprises to engage in designated operations may not engage in the import or export of goods that are subject to state-run trade administration and designated operations.

Article 52 The state-run trade enterprises and the enterprises to engage in designated operations shall carry out their business activities under normal commercial conditions, and shall not choose suppliers according to

non-commercial considerations, nor shall they reject the entrustment of other enterprises or organizations on the basis of non-commercial considerations.

Chapter V Monitoring of Import and Export and Provisional Measures

Article 53 The foreign trade department of the State Council shall be responsible for the monitoring and assessment of the import and export of goods, shall report regularly to the State Council about the status of the import and export of goods, and give suggestions.

Article 54 In order to maintain the international balance of payments equilibrium, including the occurrence of serious international unbalance of payments or the threat of serious unbalance of payments, or to maintain a level of foreign exchange reserves that is suitable for carrying out the plans of economic development, the state may take provisional restrictive measures with regard to the value or quantity of the goods to be imported.

Article 55 In order to establish or expedite the establishment of a certain domestic industry, the state may, in case this target cannot be achieved through the incumbent measures, take provisional measures for restricting or prohibiting the import of goods.

Article 56 To implement any of the following measures, the state may, when it is necessary, take provisional measures to restrict the import of any form of agricultural products or aquatic products:

1. Taking restrictive measures over the domestic production or sale of the products that are of the same kind or that directly compete with each other;

2. Clearing up, by way of subsidizing consumptions, the domestic superfluous products that are of the same kinds or that directly compete with each other;

3. Limiting the yield of animal products whose production is completely or mainly dependent upon the import of the agricultural products or aquatic products.

Article 57 In any of the following circumstance, the foreign trade department of the State Council may take provisional measures to restrict or prohibit the export of certain goods:

1. It is necessary to restrict or prohibit the export due to the occurrence of abnormalities such as serious natural disasters;

2. It is necessary to restrict the export of goods due to serious disorder in export operations;

3. It is necessary to restrict or prohibit the export of goods as pursuant to the provisions of Articles 16 and 17 of the Foreign Trade Law.

Article 58 In case provisional measures are to be taken for restricting or prohibiting the export of goods, the foreign trade department of the State Council shall make public announcements prior to the implementation of the measures.

Chapter VI Promotion of Foreign Trade

Article 59 The State takes measures like export credit insurance, export credit, export tax rebates, establishing funds for developing foreign trade etc. to promote the development of foreign trade.

Article 60 The State takes effective measures to promote the technological innovation and technological development of the enterprises and to enhance the international competition capacity of the enterprises.

Article 61 The State helps the enterprises to exploit the international market by way of providing information consultation services.

Article 62 The business operators that import or export goods may establish or join chambers of commerce for import and export so as to achieve self-regulation and coordination.

Article 63 The State encourages the enterprises to actively respond to the discriminatory antidumping, anti-subsidy, safeguard measures or other restrictive measures of foreign countries so as to protect the lawful rights and interests of the enterprises in normal trade.

Chapter VII Legal Liabilities

Article 64 Anyone who imports or exports goods that are prohibited from import or export or imports or exports goods that are restricted in importation or exportation without approval or permission shall be subject to investigation for assuming criminal liabilities according to the provisions of the Criminal Law on smuggling; if the activities are not serious enough for assuming criminal liabilities, they shall be punished according to the relevant provisions of the Customs Law; and the foreign trade department of the State Council may revoke their business licenses for foreign trade at the same time.

Article 65 Anyone who imports or exports goods that are restricted in importation or exportation beyond the scopes

approved or permitted shall be subject to investigation for assuming criminal liabilities according to the provisions of the Criminal Law concerning the crime of smuggling or the crime of illegal operations; if the activities are not serious enough for assuming criminal liabilities, they shall be punished according to the relevant provisions of the Customs Law; and the foreign trade department of the State Council may suspend or even revoke their business licenses for foreign trade at the same time.

Article 66 Anyone who counterfeits or alters or buys or sells certificates of import or export quotas, approval documents, licenses or automatic import licenses shall be subject to assuming criminal liabilities according to the Criminal Law concerning the crime of illegal operations or the crime of counterfeiting, altering, buying or selling official documents, certificates, seals of state organs; if the activities are not serious enough for assuming criminal liabilities, they shall be punished according to the relevant provisions of the Customs Law; and the foreign trade department of the State Council may revoke their business licenses for foreign trade at the same time.

Article 67 In case any business operator of import or export who obtains quotas for the import or export of goods, certification documents or automatic import licenses by deception or other unfair means, the quotas for the import or export of goods, certification documents or automatic import licenses shall be taken back, and the foreign trade department of the State Council may suspend or even revoke their business licenses for foreign trade at the same time.

Article 68 In case anyone violates the provisions of Article 51 of the present Regulations by engaging in the import or export of goods that are subject to state-run trade administration or designated operations and thus disrupts the market order and where the circumstances are serious, it shall be subject to assuming criminal liabilities according to the provisions of the Criminal Law on the crime of illegal management; if the activities are not serious enough for assuming criminal liabilities, they shall be given administrative punishments by the administrations for industry and commerce, and the foreign trade department of the State Council may suspend or even revoke their business licenses for foreign trade at the same time.

Article 69 Any state-run trade enterprise or designated-operation enterprise violates the provisions of Articles 48 and 52 of the present Regulations shall be given a warning by the foreign trade department of the State Council; if the circumstances are serious, its qualifications as a state-run trade enterprise or designated-operation enterprise may be suspended or even revoked by the foreign trade department of the State Council.

Article 70 Any staff member engaged in the administration of the import or export or goods that, in the process of performing its functions of administration over the import or export of goods, abuses its power or neglects its duties or accepts or exacts property or money from other people by taking advantage of its functions shall be subject to assuming criminal liabilities according to the provisions of the Criminal Law concerning the crime of abusing power or the crime of neglecting duties or the crime of accepting bribes or other crimes; if the activities are not

serious enough for assuming criminal liabilities, it shall be given administrative punishments.

Chapter VIII Supplementary Provisions

Article 71 Anyone who refuses to accept the decision of the administrative organs as provided in the present Regulation on the granting of quotas, tariff quotas, licenses or automatic licenses or to accept the decision on determining the qualifications of state-run trade enterprises or designated-operation enterprises or accept the decision on administrative punishments may plead for administrative reconsideration or institute a lawsuit at the people's court in accordance with the law.

Article 72 The provisions of the present Regulations shall not foreclose the taking of measures such as tariff, inspection and quarantine, security, environmental protection, intellectual property etc. according to the provisions of laws or administrative regulations over the goods imported or exported.

Article 73 The export of goods under export control like nucleus products, nucleus-related civil products; monitored chemical products, military products etc. shall be handled according to the provisions of relevant administrative regulations.

Article 74 Where it is necessary to take antidumping, anti-subsidy or safeguard measures against imported goods, the provisions of the Foreign Trade Law and other relevant laws and administrative regulations shall be observed.

Article 75 Where there are otherwise provisions in laws or regulations concerning the import or export of goods

of special economic zones like the bonded areas or export processing areas etc, such provisions shall be observed.

Article 76 The foreign trade department of the State Council shall be responsible for the bilateral or multilateral discussions and negotiations concerning the import and export of relevant goods, and shall be responsible for settling trade disputes.

Article 77 The present Regulations shall take effect as of January 1, 2002. The Interim Regulations of the People's Republic of China on the License of Import of Goods which was promulgated by the State Council on January 10, 1984, the Interim Measures on the Administration of Export Commodities which was ratified by the State Council on December 21, 1992 and issued by the MOFTEC on December 29, 1992, the Interim Measures on the Administration of the Import of Machinery and Electrical Equipments which was ratified by the State Council on September 22, 1993 and jointly issued by the State Economic and Trade Commission and the MOFTEC on October 7, 1993, the Interim Measures on the Administration of Quotas for the Import of General Commodities which was ratified by the State Council on December 22, 1993 and jointly issued by the State Development Planning Commission and the MOFTEC on December 29, 1993, and the Interim Measures on the Administration of the Operations of Importing Goods which was ratified by the State Council on June 13, 1994 and jointly issued by the MOFTEC and the State Development Planning Commission on July 19, 1994 shall be concurrently repealed.

LIST OF THE FOURTH BATCH OF DEPARTMENTAL DECISIONS ABOLISHED BY THE MINISTRY OF FOREIGN TRADE AND ECONOMIC COOPERATION, DATED MARCH 21, 2002

The Ministry of Foreign Trade and Economic Cooperation

Order of the Ministry of Foreign Trade and Economic Cooperation

No.24

In order to adapt to the new situation of our country's opening-up to the outside world, to further establish and improve the legal system of the socialist market economy, to earnestly perform the promises of our country's entry to the WTO, to accelerate the transformation of the functions of the government and to improve the level of administration according to law, the Ministry of the Foreign Trade and Economic Cooperation has fully screened the existing departmental regulations. And after the screening, MOFTEC has decided: the list of the fourth batch of 26 departmental decisions abolished (see Attachment).

Minister of the Ministry of Foreign Trade and Economic Cooperation: Shi Guangsheng

March 21, 2002

List of the Fourth Batch of Departmental Decisions Abolished by the Ministry of Foreign Trade and Economic Cooperation

Attachment:

The list of the fourth batch of 26 departmental decisions abolished

No.	Document Name	Department of Promulgation	Date of Promulgation
1	Detailed Rules for the Implementation of the Administration of the Technology Import Contracts of the People's Republic of China	MOFTEC	1987
2	Notice of the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Science and Technology on the Printing and Distribution of the Measures for the Administration of the Technologies Restricted from Export	MOFTEC, Ministry of Science and Technology	1998

3	Notice of the Ministry of Foreign Trade and Economic Cooperation on Changing the Table of the Explanation of End User and Ultimate Use	MOFTEC	1996
4	Notice of the State Bureau of the Construction Material Industry and the Ministry of Foreign Trade and Economic Cooperation on Strengthening the Administration of the Export of Concrete Production and Equipment Technologies	State Bureau of Construction Material Industry, Ministry of Science and Technology	1990

5	Notice of the Ministry of Foreign Trade and Economic Cooperation on the Execution of the Relevant Provisions of the Notice on the Relevant Issues of Strengthening the Administration on the Sales and Payment of Foreign Exchange for the Import of Intangible Assets	MOFTEC	2001
6	Supplementary Notice on Strengthening the Administration of Technology Import Contracts and Sales and Payment of Foreign Exchange	MOFTEC, State Administration of Foreign Exchange	2001

7	Notice of the Ministry of Foreign Trade and Economic Cooperation on Explaining Article 71 of the Regulations on the Implementation of the Law of the People's Republic of China on Sino-foreign Joint Ventures	MOFTEC	1985
8	Notice of the Ministry of Foreign Trade and Economic Cooperation on Explaining Article 74 of the Regulations on the Implementation of the Law of the People's Republic of China on Sino-foreign Joint Ventures	MOFTEC	1985

9	Notice on Strengthening the Administration of the Labor Cooperation Carried out in Singapore by Chinese Companies	MOFTEC	1996
10	Letter on Strictly Executing the Provisions of the Compensation Committee of the United Nations on the Distribution of Reparations	MOFTEC	1997
11	Notice on the Relevant Matters Concerning Strengthening the Administration of Production and Export of Vitamin C	MOFTEC, State Administration of Medicine	1997

12	Notice on the Supplementary Provisions of the Notice on the Relevant Matters Concerning Strengthening the Administration of Production and Export of Vitamin C	MOFTEC, State Administration of Medicine	1998
13	Notice on the Relevant Issues Concerning the export of Honey to America	MOFTEC	2001
14	Measures for the Administration of the Quotas of the Industrial Products Exported to the European Union (Interim) MOFTEC	MOFTEC	1999

15	Notice on the Relevant Supplementary Provisions of the Measures for the Administration of the Quotas of the Industrial Products Exported to the European Union (Interim)	MOFTEC	2000
16	Notice on Several Matters Concerning Encouraging the Enterprises to Make Good Use of the Quotas	MOFTEC	1999
17	Notice on the Relevant Matters regarding the Use of Quotas of Textiles Subject to the License of Freely Applied Total Amount by Foreign-funded Enterprises	MOFTEC	1999

18	Notice on the Relevant Matters Concerning the Free Application for Quotas of Textiles of 2001	MOFTEC	2000
19	Notice of the Ministry of Foreign Trade and Economic Cooperation on the Cancellation of the Quotas of 6 Categories (Men's Shirts with Sewed Collars) of Textiles by Canada	MOFTEC	1997
20	Notice on the Relevant Matters Concerning Adopting the Freely Applied Visa of Limited Total Number to the Categories of Textiles not in Bad Need	MOFTEC	1998

21	Notice on the Relevant Matters Concerning Strengthening the Administration of Quotas of the Textiles Subject to the Freely Applied License of Limited Total Number	MOFTEC	1999
22	Notice on the Exhibition Organization by the Guaranteed Stands of the Chinese Export Commodities Fair	MOFTEC	1998
23	Notice on Printing and Distributing the Relevant Materials of the Agency Agreement on Frozen Meat Fowls Supplied to Hong Kong and Macao (Sample)	MOJTEC	1996

24	Notice on Revising the Relevant Measures for Trade with Taiwan Province	MOFTEC	1988
25	Notice on Opening the Import Management Power in Trade with Taiwan	MOFTEC	1998
26	Notice on Printing and Distributing the Interim Provisions on the Procedures for Going Abroad of Labors Sent Abroad	MOFTEC, Ministry of Public Security Ministry of Foreign Affaires	1997

EXCERPT OF STATEMENT BY THE HEAD OF THE CHINESE DELEGATION ON THE TRANSITIONAL REVIEW OF CHINA BY THE COUNCIL FOR TRADE IN GOODS OF THE WORLD TRADE ORGANIZATION, DATED NOVEMBER 29, 2002

WORLD TRADE ORGANIZATION
Council for Trade in Goods

G/C/W/441
29 November 2002

(02-65X2)

Original: English

STATEMENT BY HEAD OF THE CHINESE DELEGATION ON THE TRANSITIONAL REVIEW OF CHINA BY THE COUNCIL FOR TRADE IN GOODS

The following statement, which was made at the meeting of the Council for Trade in Goods on 22 November 2002, has been received from the Permanent Mission of the People's Republic of China with the request that it be circulated to Members.

I appreciate the opportunity of having the floor to address the Council on the implementation of China's commitments with regard to trade in Goods within the framework of paragraph 18 of China's Protocol of Accession.

A strong delegation, composed of the senior officials from relevant administrative authorities including the State Development Planning Commission (SDPC), the

State Economic and Trade Commission (SETC), Ministry of Finance and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), has been assembled to address the comments and concerns of other Members in this review. We hope that candid exchange of ideas and effective clarification can be achieved through this annual mechanism. Following the "Information to be provided by China in the context of the Transitional Review Mechanism" as specified in the Annex 1A to the Accession Protocol of China, it's expected that my introduction will help Members better understand the efforts and achievements China has made in this respect after its accession to the WTO.

* * *

Part Two: Implementation of WTO Obligations and Commitments

1. Adherence to the principle of non-discrimination

In line with its commitments, to provide full national treatment to imported products, the Chinese Government has repealed or modified the laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution, or use of: after sale service, pharmaceutical products, cigarettes, spirits, chemicals and boiler and pressure vessels.

- Regarding the after sales service, on 11 March 2002, the Ministry of Foreign Trade and Economic Cooperation annulled its Decree No. 3 of 1993 in its Public Notice No. 12 of 2002, and thereby fulfilled the commitment in this regard. The annulled Decree

was on after sales service and was considered to be inconsistent with the principle of national treatment by a number of WTO Members during China's WTO accession negotiations.

- Regarding cigarettes, administrative measures taken by the State Tobacco Monopoly Administration have already led to a substantial increase of the number of retail outlets for imported cigarettes in China. The commitment of unification of the licensing requirements for both the domestic and imported cigarettes will be fulfilled by way of amending the Decree No. 2 of the State Tobacco Monopoly Administration, which is now under way. In the renewal of licenses in year 2003, a unified license will be issued for retail sale of both domestic and imported cigarettes, and the former special license for retail sale of imported cigarettes as well as the requirement that only those outlets with the special license are permitted to sell imported cigarettes will be abolished. Therefore, China will be able to fulfill the commitment of applying national treatment in this regard after the two-year transitional period.

- Regarding boilers and pressure vessels, the newly formulated Regulations on the Management and Supervision of Manufacturing of Boilers and Pressure Vessels will enter into force on 1 January 2003. Draft of the Regulations was notified to the TBT Committee of the WTO in May this year (G/TBT/N/CHN/1). Article 18 of the new Regulation specified a 4 year validity for the Certificate of Production, which applies equally to both domestic and imported products. The relevant standards on the charges are

in the process of drafting and will be enforced after the endorsement by the Sate Development Planning Commission and Ministry of Finance. A uniform charging standard will be ensured for products both domestically made and imported.

For pharmaceutical products, chemicals and spirits, a transitional period of 1 year was reserved as provided by China's accession protocol. During the course of this year, constructive measures have been taken to amend or abolish the related laws and regulations, thanks to these efforts, the conformity with the national treatment requirements has been practically attained well ahead of the committed date.

- Regarding pharmaceutical products, the former Provisional Measures on Administration of Prices of Pharmaceutical Products has been replaced by Measures on Administration of Government Pricing for Pharmaceutical Products, with which the principle of national treatment is observed in procedures and formulas for pricing and classification of pharmaceutical products.
- Regarding spirits, new administrative measures are at the stage of formulation. The new measures on spirits will regulate the products and markets of spirits on the basis of safety and quality requirements, regardless the origin of the spirits.
- Regarding the chemicals, specifically the registration procedures applicable to imported chemical products, the State Administration of Environmental Protection is now amending the Provisions on the Environmental Administration of Initial Imports of Chemical Products

and Imports and Exports of Toxic Chemical Products in collaboration with the MOFTEC and the General Administration of Customs, and the amended rules will be in conformity to the principle of national treatment and internationally accepted practices. Draft of the amended rules has been publicized by the State Environmental Protection Administration for public comments, with a view of its enforcement before the end of the transitional period. Moreover, the legislation on new chemical substances is also under way to align our governing procedures with international principles.

2. Non-automatic export licensing requirements under WTO agreement and accession commitments

China maintains export administration of a small number of products for the purposes of protecting public interest, avoiding shortage in domestic supply, conserving the exhaustible natural resources, or undertaking obligations under international treaties or intergovernmental agreements, which are in conformity to GAT1994. From 1 January 2002, China gave up export administration of Chinese chestnut, reed mat, red bean, honey, colophony, tung wood and the board (to Japan), vitamin C and etc. There are now still 54 products subject to export administration, including live bovine and beef (to Hong Kong, China and Macao, China), live swine and swine meat (to Hong Kong, China and Macao, China), fowls and meat (to Hong Kong, China and Macao, China), garlic, tea, wheat, corn, rice, liquorices roots and their products, rushes and their products, sugar, bauxite, light (dead)-burned magnesia, talc, fluorspar, rare earth, tungsten ores and products, antimony ores and products, tin, zinc,

coal, coke, crude oil, processed oil, paraffin wax, artificial corundum, heavy water, ozonosphere depleting materials, chemicals under supervision and control, chemicals used to produce narcotics, sawn wood, silk, greige, cotton, woven fabrics, silver, platinum, certain steel products (to the U.S.), and etc. These export administrative measures have been notified to the WTO.

* * * *

MEASURES FOR THE ADMINISTRATION OF EXPORT COMMODITIES QUOTAS PROMULGATED BY THE MINISTRY OF FOREIGN TRADE AND ECONOMIC COOPERATION, EFFECTIVE JANUARY 1, 2002

Order No. 12 of the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China on MEASURES FOR THE ADMINISTRATION OF EXPORT COMMODITIES QUOTAS

In accordance with the *Law of the People's Republic of China on Foreign Trade* and the *Regulations of the People's Republic of China on the Administration of the Import and Export of Goods*, the Measures for the Administration of Export Commodities Quotas has been approved after discussion at the 9th ministerial meeting of the Ministry of Foreign Trade and Economic Cooperation of 2001 and is hereby promulgated, and shall come into force on January 1, 2002.

Minister of the Ministry of Foreign Trade and Economic Cooperation: Shi Guangsheng

December 20, 2001

Measures for the Administration of Export Commodities Quotas

Chapter I General Provisions

Article 1 In order to standardize the administration of export commodities quotas, to guarantee that the administration of export commodities quotas is consistent with the principles of efficiency, justice, openness and transparency and to safeguard the normal exports of commodities subject to quota administration, these Measures have been formulated according to the relevant provisions of the Law of the People's Republic of China on Foreign Trade (hereinafter referred to as the Foreign Trade Law) and the Regulations of the People's Republic of China on the Administration of Goods Import and Export (hereinafter referred to as the Regulations on Goods Import and Export).

Article 2 The Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as MOFTEC) shall be responsible for the administration of export commodities quotas of the whole country. The commissions (departments, bureaus) of foreign trade and economic cooperation of the provinces, autonomous regions, municipalities directly under the Central Government and municipalities separately listed on the State plan (hereinafter referred to as the local administrative authorities of foreign trade and economic cooperation) shall, based on the authorization of MOFTEC, be responsible for the administration of export commodities quotas within their respective area.

Article 3 According to the provisions of Article 35 and Article 36 of the Regulations on Goods Import and Export, MOFTEC applies export quota administration with respect to the commodities restricted from export by the State.

Article 4 These Measures shall be inapplicable to the following commodities subject to export quota administration:

1) Export commodities subject to quota bidding or under the administration of "pay to use";

2) Export commodities subject to passive quota administration according to the provisions of multilateral or lateral agreements;

3) Commodities listed in the appendixes of these Measures.

Article 5 These Measures shall be applicable to the exports of the commodities subject to quota administration in various trade forms.

Article 6 The valid term of export commodities quotas shall expire on December 31 of their current year.

Chapter II The list of export commodities subject to quota administration

Article 7 The list of export commodities subject to quota administration shall be formulated, adjusted and promulgated by MOFTEC.

Article 8 The list of export commodities subject to quota administration shall be promulgated at least 21 days before the implementation; and in case of emergency, shall be promulgated not later than the day of implementation.

Chapter III Total Amount of Export Quotas

Article 9 The total amount of export commodities quotas shall be determined and promulgated by MOFTEC.

Article 10 When determining the total amount of export commodities quotas, MOFTEC shall take the following factors into consideration:

1) needs of guaranteeing the safety of the national economy;

2) needs of protecting the limited domestic resources;

3) development planning, objectives and policies of the State on the relevant industries;

4) demands of the international and domestic markets, and the production and sales status.

Article 11 MOFTEC shall promulgate the total amount of export quotas of the next year before October 31 of each year.

Article 12 MOFTEC may adjust the total amount of export commodities quotas for a year according to the actual needs, but the relevant adjustments shall be finished and promulgated no later than September 30 of that current year.

Chapter IV Application for Export Quotas

Article 13 The export enterprises that have the license or qualification for import and export management and have no violation of laws and rules in economic activities in the last 3 years may apply for the export commodities quotas.

Article 14 The enterprises under local administration shall file the applications for quotas to the local administrative authorities of foreign trade and economic cooperation; the local administrative authorities of foreign trade and economic cooperation shall, after examining and gathering the applications of the enterprises of their respective areas, report to MOFTEC according to the requirements of MOFTEC. The enterprises under central administration shall directly apply to MOFTEC for the export commodities quotas.

Article 15 The export enterprises shall file the quota applications in formal written form, and shall submit the relevant documents and materials according to the requirements.

Article 16 MOFTEC shall accept the applications for the export commodities quotas of the next year presented by the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration from November 1 to 15 each year, and shall not accept the applications filed at any other time.

Chapter V Distribution, Adjustment and Management of Export Quotas

Article 17 MOFTEC shall distribute the export commodities quotas to the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration; and the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration shall, within the amount of quotas of their respective area and according to these Measures and the relevant provisions of

the State on the administration of goods export, distribute the quotas to the enterprises of their respective area that have filed applications.

Article 18 MOFTEC shall distribute the export quotas of the next year to the local administrative authorities of foreign trade and economic cooperation and the enterprises under central administration before December 15 of each year; and the administrative authorities of foreign trade and economic cooperation shall timely distribute the quotas handed down by MOFTEC to the applying enterprises of their respective area. If there exist precarious factors in the international market, MOFTEC may distribute the export quotas of the next year in two lots. In the first distribution, no less than 70% of the total amount of quotas of the next year shall be distributed before December 15 of each year; and the rest part shall be distributed no later than June 30 of the following year.

Article 19 When distributing the quotas, MOFTEC and the local administrative authorities of foreign trade and economic cooperation shall take into full consideration the export performance of that commodity, the utilization rate of quotas, the business management capacity, the production scale and the resources status etc. of the applying enterprise or area in the last 3 years.

Article 20 Under any of the following circumstances, MOFTEC may increase or reduce the quotas that have already been distributed to the local administrative authorities of foreign trade and economic cooperation or the enterprises under central administration:

1) Major changes take place in the international market;

2) Major changes of domestic resources take place;

3) the quota use paces between the areas or the enterprises under central administration are obviously unbalanced.

Article 21 The local administrative authorities of foreign trade and economic cooperation shall, in line with the principle of increase of utilization rate of quotas, inspect the enforcement of export commodities quotas of their respective area regularly, and shall take back the distributed quotas and redistribute them with respect to those of which the utilization rate fail to meet the prescribed requirements.

Article 22 The local enterprises shall return the annual quotas that they fail to use to the local administrative authorities of foreign trade and economic cooperation in time, and the local administrative authorities of foreign trade and economic cooperation may redistribute the quotas within their respective area or hand them in to MOFTEC in the current year.

The enterprises under central administration shall directly return the annual quotas they fail to use to MOFTEC before October 31 of the current year.

Article 23 If the local administrative authorities of foreign trade and economic cooperation or the enterprises under central administration fail to return the quotas according to the provisions of Article 22 of these Measures, and fail to implement all the quotas of their respective enterprise or area before the end of the current year, MOFTEC may deduct their corresponding quotas in the next year.

Article 24 MOFTEC and the local administrative authorities of foreign trade and economic cooperation shall notify the relevant export license issuing bodies about the quota distribution and the adjustment results at the same time; the distribution results and the adjustment plans of the local administrative authorities of foreign trade and economic cooperation shall be reported to MOFTEC for record within 30 days of the day on which the decision is promulgated.

Article 25 The export enterprises shall, based on the quota certifications issued by MOFTEC or the local administrative authorities of foreign trade and economic cooperation and according to the provisions on the administration of export license, apply to the license issuing bodies authorized by MOFTEC for the export quota licenses, and go through the procedures for goods examination and release at Customs based on the export quota licenses.

Chapter VI Legal Responsibilities

Article 26 Where any export operator exports export commodities subject to quota administration beyond the scope approved or licensed or without approval by the means of falsely reporting the commodity name or reporting less export amount, etc., he shall be punished according to the provisions of Article 65 of the Regulations on Goods Import and Export, and MOFTEC may cancel the export commodities quotas he has already obtained.

Article 27 If anyone forges, alters or trades the export commodities quota certificates, documents of approval or export quota licenses, he shall be punished according to

the provisions of Article 66 of the Regulations on Goods Import and Export, and MOFTEC may cancel the export commodities quotas he has already obtained.

Article 28 Where any export operator obtains the export commodities quotas, documents of approval or export quota licenses through deception or other improper ways, he shall be punished according to the provisions of Article 67 of the Regulations on Goods Import and Export, and MOFTEC may cancel the export commodities quotas he has already obtained.

Article 29 Where the local administrative authorities of foreign trade and economic cooperation distribute the quotas in violation of the provisions of these Measures or the provisions of the State on the administration of state-run trade or designated operations, they shall be punished according to the relevant provisions of the Administrative Penalties Law, and MOFTEC may notify them to make corrections and give them warnings.

Article 30 Where anyone has objections against the decisions on quota distribution or decisions on penalties made by MOFTEC, he may either apply for administrative review according to the Administrative Review Law, or bring a lawsuit before the people's court.

Chapter VII Supplementary Provisions

Article 31 The export commodities quotas of enterprises with foreign investment shall be handled according to the relevant provisions.

Article 32 The power to interpret these Measures shall remain with MOFTEC

Article 33 These Measures shall enter into force on January 1, 2002. The Interim Measures of the Ministry of Foreign Trade and Economic Cooperation for Reporting, Distributing and Enforcing Export Commodities Quotas promulgated by MOFTEC on October 6, 1998, and the Rules for the Implementation of Interim Measures for Reporting, Distributing and Enforcing Export Commodities Quotas promulgated by MOFTEC on January 2, 1999 shall be nullified simultaneously.

SUMMARIES OF THE MAY 23, 2002 AND JANUARY 23, 2003 MEETINGS OF THE VITAMIN C SUBCOMMITTEE

Meeting Summary

On May 23, GM Kong and Wang Qi of our Company attended the VC Chapter Meeting in Dalian, which was hosted by CCCMHPIE and attended by broader export enterprises. The meeting agenda was as follows:

1. Revise bylaws of the VC Chapter and make relevant bylaws;
2. Select new Chairman and directors of the Chapter;
3. Board meeting.

This meeting was attended by 5 production enterprises and 3 foreign trade enterprises with the following participants:

1.	CCCMHPIE:	Zhang Changxin, Qiao Haili, Wan Ning
2.	NEPG:	Chen Gang, Wang Renzhi
3.	Jiangshan:	GM Kong, Wang Qi
4.	Weisheng:	Feng Zhenying, Yu Tao, Wang Yaguang, Li Cunwei (of Imp. & Exp. Co. of CSPC)
5.	Welcome:	Zhang Yingren (Deputy GM)
6.	Shanghai Sunve:	Xu Yaosheng
7.	China National Pharmaceutical Foreign Trade Corp.:	Zhao Jun

8. China National Medicines & Health Products Imp. & Exp. Corp.: Liu Yuehua
9. Jiangxi Medicine & Health Products Imp. & Exp. Co., Ltd.: Long Ying

Below is the summary of the meeting:

1. Revise VC Chapter's bylaws and make relevant bylaws

   The draft was passed in principle. Details were allowed to be brought back by attending companies to study. If a company has revisions, it must propose the change(s) by the end of this month in writing.

   A company can apply to join the VC Chapter, whether it has or hasn't done VC business.

   A company, without being a member of the VC Chapter, can export VC (but the export quantity needs to be confirmed by other companies).

2. Select new Chairman and directors

   The meeting discussed and passed the board of directors of the VC Chapter formed by the four VC producers (Shanghai Sunve was not included) and CCCMHPIE. In the meantime, an investigation team was also set up to serve as a monitor of the board. The team was formed by foreign trade enterprises. The Secretary General of the VC Chapter will serve as the team leader and China National Medicines & Health Products Imp. & Exp. Corp. and Jiangxi Medicine & Health Products Imp. & Exp. Co., Ltd. constitute the current investigation team.

3. Board meeting

The board meeting was attended only by the representatives of the four production enterprises (Sunve was not included) and CCCMHPIE.

- Selection of the Chairman

  Director of the Western Medicine Dept. of CCCMHPIE serves as the Chairman and the four production enterprises will rotate their turn of acting as the Vice-Chairman of the board. The rotation order is as follows: NEPG, Jiangshan, Weisheng and Welcome. The term is from Jan. 1 to Dec. 31.

  The current board of directors is:

Chairman: Qiao Haili	Vice-Chairman: NEPG
Directors:	Jiangshan, Weisheng and Welcome
Secretary General:	Qiao Haili
Deputy Secretary General:	Wang Ning
Advisor:	Zhang Changying

- Whether to set up a Board fund

  It was decided that a standing board fund will not be set up. Rather, the board meetings will be organized by the company which serves as the Vice-Chairman. Meeting expenses will be paid by the acting company in advance and will be divided up and paid by the four producers at the end of the year. Accommodations for the participants of the four companies will be paid by each company.

  Transportation and meeting expenses for CCCMHPIE will be paid by the acting company in advance and will be divided up and paid by the four producers at the end of the year.

Reference material: Jan. - Mar. Export Quantity of Each Producer (compiled by customs)

	Actual export
NEPG	3,240.13
JJPC	2,538.4
Weisheng	3,396.4
Welcome	1,445.475

Reported by: Wang Qi 05/25/2002

On Jan. 23, 2003, CCCMHPIE held a VC Chapter meeting in Panjiayuan, Beijing. The following companies and people attended the meeting:

CCCMHPIE:	President Feng, Qiao Haili, Wan Ning
NEPG:	Chen Gang, Wang Renzhi
Jiangshan:	Kong Tai, Wang Cheng, Wang Qi
Weisheng:	Feng Zhenying, Yu Tao, Wang Yaguang, Guo Guoping
Welcome:	Zhang Yingren

The main points and information of this meeting were as follows:

CCCMHPIE made public some statistical information (according to the stamped contracts):

Jan. - Nov. 2002 Export Situation

	Avg. price (USD)	Total quantity (Ton)	Total amount (USD)
Total China VC export	USD3.20/kg	35,166.982 tons	112,610,191
Of which, export to EU	USD3.10/kg	15,142.850 tons	47,006,534
export to the US	USD3.21/kg	10,551.188 tons	33,919,945

Jan. -17 (as *shown in Chinese source document, maybe a typo?– Translator's note)* 2003 Export Stamp Application Situation

Price (USD/kg)	>9.00	8~9.00	7~8.00	6~7.00	5~6.00	4~5.00	<4.00
Quantity (Ton)	457.5	73	105	450	344.5	719	620

Note: NEPG has more high-priced contracts and Jiangshan has more low-priced contracts.

Drafted by: Wang Qi Jan. 25, 2003

VC Chapter Meeting Memo (10/12/04)

On Oct. 12, 2004, a VC Chapter meeting was held in the Shanghai Magnificent International Hotel. Companies and people attending this meeting were:

CCCMHPIE:	Qiao Haili, Wan Ning
NEPG:	Chen Gang, Wang Renzhi
Jiangshan:	Kong Tai, Wang Cheng, Wang Qi
Weisheng:	Feng Zhenying, Wang Yaguang, Wang Xiaobin
Welcome:	Huang Pinqi, Zhang Yingren
Hualong:	Feng Yanming and another person
Anhui Tiger:	Chairman Wu of its board.

Main points and information of this meeting are below:

CCCMHPIE made public relevant statistical information (according to the stamped contracts):

Jan. - Aug. 2004 Export Situation

	Avg. price	Total quantity (Ton)	Unit price of the same period last year
Total China VC export	USD4.93/kg	40,906 tons	USD6.98/kg
Of which, export to EU	USD4.60/kg	17,000tons	/
export to the US	USD4.84/kg	13,000 tons	USD6.13/kg
export to Japan	USD6.74/kg	2,808 tons	/

Note: Due to the EU gaining 10 new members, above data is less comparable.

Jan. - Aug. 2003 Domestic Producers'
Export Data under Self-managed Export

Producer	Quantity (Ton)	Unit Price (USD/kg)
NEPG	13653	4.83
Welcome	8574	4.71
Jiangshan	8304	4.83
Weisheng	6211	5.11
Shangdong Hualong	1152	5.13
Anhui Tiger	573	4.27

Note: Data on our Company is not accurate, because our VC granule exports used a different HTS code.

Drafted by: Wang Qi Oct. 16, 2004

COMMENTS OF THE CHINA CHAMBER OF COMMERCE OF METALS, MINERALS & CHEMICALS IMPORTERS AND EXPORTERS ON MARKET ORIENTED ENTERPRISE ON THE U.S. DEPARTMENT OF COMMERCE'S MAY 3, 2004 FEDERAL REGISTER NOTICE, DATED MAY 19, 2004

Comments of the China Chamber of Commerce of Metals, Minerals Chemicals Importers & Exporters on Market Oriented Enterprise

We are the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters. With a membership of over 4,000, we are the largest and most representative association in the fields of metals, minerals and chemicals. We attach great importance to the issue of the DOC granting individual respondents market-economy treatment (MET) in anti-dumping proceedings and are grateful for the opportunity to comment.

With the following comments we argue that market economy status should be granted to China in anti-dumping investigations and that individual respondents should be considered for MET. For quite a long time, the US and China have held different opinions on China's market economy status. It is a prejudice against Chinese respondents that DOC refuses to recognize China's market-economy status.

It is well known China has established a market economy system over the past 20 years. The government, at both national and local levels, has faded out from direct involvement in the management of enterprises and

become a macro regulator. It has no right to fix the prices for these enterprises, whether they are state-owned or privately owned, nor does it have the ability to influence prices by interfering in the purchase of raw materials, the channels of distribution, or company business practices. Additionally, a basic legal system for the market economy has been established in China. This system protects the independence and autonomy of enterprises, and ensures that the nature and quantity of the goods to be produced are decided by the producer at his own will, according to the demand in the market. Even state-owned enterprises are operated under the rules of market economics. Therefore, domestic prices of Chinese products as a whole are not interfered with, and they are reliable. All Chinese enterprises operate in a competitive and fully open market that relies on supply and demand to for price determinations.

With regard to the methods employed by the United States to determine China's current market economy status, we believe that, the analyses are partial and the criteria used to decide whether or not to grant this status to China is doubtful. Although China's market economy is not perfect at present, this imperfection is quite normal. There is no perfect market economy in any country in the world, including those recognized as market economies by the U.S. The key issue is whether the U.S. will adopt the same criteria when granting market economy status to China as it did with other countries. In addition, the mechanism of market economy treatment itself is worth arguing on the grounds of accuracy and fairness. We are curious why it is necessary to conduct a complicated and rigorous investigation before granting market economy

status to China when other countries were able to achieve such status almost automatically.

As the representative for China's metals, minerals and chemicals industries, we argue that these industries already meet U.S. standards of market oriented enterprise (MOE). We are puzzled as to why the DOC continues to use the same criteria to examine China's industries. Although the intention to grant individual respondent market economy treatment is a positive step, we think that the DOC should take into consideration that the overwhelming majority of Chinese enterprises already function within the rule of the market economy without governmental influence. Currently, the vast majority of Chinese industries have met the three MOE criteria, yet none have been recognized as MOE.

We firmly believe that the market-based prices of Chinese enterprises should be compared to the broader economic environment when considering granting individual Chinese respondents MET. When calculating production cost, only the data submitted by the enterprises should be used to determine the cost of different factors of production, including labor, land, power, and water. Some parties think that the firms' input prices are distorted under the broader NME environment, but this conclusion is unfair. DOC should respect the fact that Chinese enterprises work under the rule of the market economy and should grant Chinese enterprises full MET instead of partial MET. Furthermore, DOC should remove the measure of "double counting" when conducting AD/CVD investigations against the products imported from China, as it is against U.S. law and its WTO obligations. It is unfair and discriminatory.

China Chamber of Commerce for Import & Export of Machinery & Electronic Products

14th Floor, North Office Tower, New World Center

No. 3B, Chongwenmen Wai Street, Beijing, China

PC: 100062 Tel: ++86-10-67092715/67092716

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E-mail: law@cccme.org.cn

May 19, 2004

Mr. James J. Jochum

Assistant Secretary for Import Administration

U.S. Department of Commerce

Central Records Unit, Room 1870

Pennsylvania Avenue and 14th Street NW

Washington, DC 20230

Re: Public Hearings on U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues

Dear Assistant Secretary Jochum,

China Chamber of Commerce for Import & Export of Machinery and Electronic Products (CCCME) hereby responds to the Department's May 3, 2004 Federal Register notice (69 Federal Register 24,132) inviting comments and requests testify concerning topics and issues for the U.S.-China Joint Commission on Commerce and Trade Working Group on Structural Issues.

As an interested Chinese party, we attach a written comment in an original and six copies, as well as an electronic version on CD-ROM.

We would appreciate the opportunity to make an oral presentation at the hearing on June 3. The name, address, telephone number, position and the relevant information of our representative who will make a presentation are as followed:

Mr. Liu Mei Kun, Vice President of CCCME;

Address: 14th Floor, North Office Tower,

Beijing New World Center,

No. 3B, Chong Wen Men Wai Street, Beijing, P.R. China

Tel: 0086-10-67092852; Fax: 0086-10-67092615;

E-mail: liumeikun@cccme.org.cn

We also appreciate it very much if you extend the time for our presentation beyond the five-minute time limitation.

Best wishes,

Sincerely yours,

/s/_____

Liu Mei Kun

Vice President, CCCME

PROVISIONS ON ADMINISTRATIVE PENALTIES AGAINST PRICE-RELATED UNLAWFUL PRACTICES, DATED AUGUST 1, 1999

Provisions on Administrative Penalties against Price-related Unlawful Practices

(Approved by the State Council on July 10, 1999, promulgated by the State Development and Planning Commission on August 1, 1999)

Article 1 These Provisions are formulated according to the relevant provisions of the Price Law of People's Republic of China (hereinafter referred to as Price Law) in order to penalize price-related unlawful practices according to law and protect lawful rights and interests of consumers and operators.

Article 2 The competent price control departments of the people's governments at or above the county level shall conduct supervision and inspection on price-related activities according to law, and make decisions on the administrative penalties against price-related unlawful practices.

Article 3 Administrative penalties against price-related unlawful practices shall be decided by the competent price control departments of the local people's governments at the places where the price-related unlawful practices take place; if the competent price control department of the State Council stipulates that the administrative penalties shall be decided by the competent price control departments at higher levels, such stipulations shall prevail.

Article 4 If an operator, in violation of the provisions of Article 14 of the Price Law, commits any one of the following acts, he shall be ordered to make corrections,

have his illegal earnings confiscated, and may also be fined no more than five times the illegal earnings; if there are no illegal earnings, he shall be given a warning, and may also be fined no less than 30,000 yuan and no more than 300,000 yuan; if the circumstances are serious, he shall be ordered to suspend the business for rectification, or have his business license revoked by the administrative department of industry and commerce:

(1) Collusion with others and control of the market price, which impairs the lawful rights and interests of other operators and consumers.

(2) except for the sale of fresh or live goods, seasonal commodities or obsolete stock at reduced prices according to law, dumping at prices lower than cost in order to elbow out competitors or monopolize the market, which disturbs the normal order of production and operation and impairs the rights and interests of the state and other operators.

(3) when providing the same commodities or services, carrying out price discrimination against other operators having the same trade terms.

Article 5 An operator, in violation of the provisions of Article 14 of the Price Law, who forces up prices and pushes the prices of commodities to rise too highly by fabricating and spreading price- rising information, or inveigling consumers or other operators to transact with him by employing fake or misleading price instruments, shall be ordered to make corrections, have his illegal earnings confiscated, and may also be fined no more than five times the illegal earnings; if there are no illegal earnings, he shall be given a warning, and may also be fined no less than 20,000 yuan but no more than

200,000 yuan; if the circumstances are serious, he shall be ordered to suspend the business for rectification, or have his business license revoked by the administrative department of industry and commerce.

Article 6 An operator, in violation of the provisions of Article 14 of the Price Law, who raises or depresses prices in disguised forms by selling or buying commodities or providing services by the means of driving up or down the rank, shall be ordered to make corrections, have his illegal earnings confiscated, and may also be fined no more than five times the illegal earnings; if there are no illegal earnings, he shall be given a warning, and may also be fined no less than 10,000 yuan but no more than 100,000 yuan; if the circumstances are serious, he shall be ordered to suspend the business for rectification, or have his business license revoked by the administrative department of industry and commerce.

Article 7 An operator who commits any one of the following acts by failing to implement government guided prices or government fixed prices shall be ordered to make corrections, have his illegal earnings confiscated, and may also be fined no more than five times the illegal earnings; if there are no illegal earnings, he may be fined no less than 20,000 yuan but no more than 200,000 yuan; if the circumstances are serious, he shall be ordered to suspend the business for rectification:

(1) setting prices in excess of the floating range of government guided prices;

(2) setting prices higher or lower than the government fixed price;

(3) without any authorization, laying down prices for commodities or services which shall have government guided prices or government fixed prices;

(4) advancing or postponing the implementation of government guided prices or government set prices;

(5) laying down charging items or standards for charges by himself;

(6) increasing charging standards in disguised forms such as disintegrating charging items, charging repeatedly and widening charging range;

(7) continuing to charge fees on the items that the government has abolished by formal decree;

(8) violating of provisions, charging fees in disguised forms such as cash deposits or liens;

(9) providing services and charging fees in compulsion or in disguised compulsion forms;

(10) providing services not in conformity with provisions but charging fees;

(11) other acts of not implementing the government guided prices or government fixed prices.

Article 8 An operator who does not implement legal price intervention measures or emergency measures and commits any one of the following acts shall be ordered to make corrections, have his illegal earnings confiscated, and may also be fined no more than five times the illegal earnings; if there are no illegal earnings, he may be fined no less than 40,000 yuan but no more than 400,000 yuan; if the circumstances are serious, he shall be ordered to suspend the business for rectification:

(1) not obeying the system of price-raising declaration or of price-adjusting record;

(2) exceeding the range of the price difference ratio or profit ratio;

(3) not implementing the prescribed limited price or lowest protective price;

(4) not implementing the measure for centralizing price-setting authorities;

(5) not implementing the measure for freezing prices;

(6) other acts of not implementing legal price intervention measures or emergency measures;

Article 9 If the operator mentioned from Articles 4 to 8 is an individual, he may be fined no more than 50,000 yuan for his price-related unlawful practices without any illegal earnings.

Article 10 An operator, in violation of laws or regulations, who makes exorbitant profits shall be ordered to make corrections, have his illegal earnings confiscated, and may also be fined no more than five times the illegal earnings; if the circumstances are serious, he shall be ordered to suspend the business for rectification, or have his business license revoked by the administrative department of industry and commerce.

Article 11 An operator who, in violation of the provisions on clear marking of prices, commits any one of the following acts shall be ordered to make corrections, have his illegal earnings confiscated, and may also be fined no more than 5,000 yuan:

{1) not marking prices;

(2) not marking prices according to prescribed contents and forms;

(3) selling commodities with extra charges in addition to marked prices, or charging unmarked fees;

(4) other acts of violating the provisions on clear marking of prices.

Article 12 Those who refuse to provide information that is necessary to price supervision and inspection or provide fake information shall be ordered to make corrections and given a warning; if no corrections are made by the expiration of the time limit, they may be fined no more than 50,000 yuan, the persons in charge directly responsible and the other directly responsible persons shall be imposed disciplinary sanctions.

Article 13 If the illegal activities of an operator are found to possess the following three conditions at the same time during price supervision and inspection, the competent price control departments under governments may order him to suspend the related business according to the provisions of Clause 3 of Article 34 of the Price Law:

(1) the circumstances of the illegal activities are complex and serious, which may be given comparatively severe punishment upon investigation;

(2) the illegal activities will continue if the related business is not suspended;

(3) the illegal activities may influence the confirmation of the illegal facts while other measures cannot guarantee a thorough investigation if the related business is not suspended.

When the competent price control departments under governments conduct price supervision and inspection, the law enforcement officials shall be no less than two, and they shall show their credentials to the operators or persons concerned.

Article 14 Operators causing consumers or other operators to pay more money because of their price-related unlawful practices shall be ordered to have it returned within the time limit; and they shall be ordered to look for consumers or operators who have over paid by publishing an announcement; the money that cannot be returned by the expiration of the time limit of the announcement shall be regarded and handled as illegal earnings.

Article 15 Operators falling under the conditions listed in Article 27 of the Administrative Penalty Law shall be punished lightly or given a lighter punishment according to law.

Under any one of the following circumstances, operators shall be punished with severity:

(1) the price-related unlawful practices are serious or have great social influence;

(2) they are found in violation provisions in every inspection;

(3) forging, altering, transferring or destroying proofs;

(4) transferring the capital or commodities related to the price-related unlawful practices;

(5) other price-related unlawful practices that shall be punished with severity.

Article 16 If an operator disagrees with the punishment decision made the competent price control department under government, he shall firstly make an application for administrative reconsideration according to law; if he disagrees with the administrative reconsideration decision, he may file a suit in the people's court.

Article 17 If a fine is not paid by the expiration of the time limit, an additional fine shall be imposed at a rate of 3% of the amount of the fine per day; if the illegal earnings is not paid by the expiration of the time limit, an additional fine shall be imposed at a rate of 0.2% of the amount of the illegal earnings per day.

Article 18 As for the units and individuals that commit price-related unlawful practices listed in these Provision, if the circumstances are serious and they refuse to make corrections, in addition to the punishments that shall be imposed upon them according to these Provisions, the competent price control departments under governments may make public their price-related unlawful practices at their business places until corrections are made.

Article 19 Price law enforcement officials disclosing State secrets or operators' commercial secrets, or abusing their powers, neglecting their duties, practicing favoritism for personal interests shall be investigated for criminal liabilities according to law if crimes are constituted; if no crimes are constituted, administrative sanctions shall be imposed upon them according to law.

Article 20 These Provisions take effect as of the date of promulgation.

COMMENTS OF THE BUREAU OF FAIR TRADE FOR IMPORTS AND EXPORTS OF THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA ON DETERMINATION AND TREATMENT OF MARKET ORIENTED ENTERPRISES, DATED JUNE 21, 2007

Comments of the Bureau of Fair Trade for Imports and Exports of the Ministry of Commerce of the People's Republic of China on Determination and Treatment of Market Oriented Enterprises

June 25, 2007

On May 25, 2007, the U.S. Department of Commerce (DOC) gave notice in the *Federal Register* soliciting public comments on whether and how market economy treatment should be granted to individual respondent enterprises in antidumping proceedings involving China. In response to DOC's request, the Bureau of Fair Trade for Imports and Exports of the Ministry of Commerce of the People's Republic of China (BOFT) hereby summits the following comments:

I. The U.S. Should Recognize China As a Market Economy.

The issue of China's market economy status in antidumping investigations involves the WTO principle of fair and non-discriminatory treatment in trade. It relates to whether China's exporting industries and related enterprises can compete as equals with the exporters of other countries, which are recognized by the United States as market economies, in a fair, equitable and

non-discriminatory environment. China has followed the U.S. legal and procedural requirements and submitted applications to the United States for market economy status and market-oriented industry status in a number of cases on a number of occasions. However, the United States has persistently refused China's application on various pretexts and fully ignored the evidence and facts that have been provided by China. Because the United States has persisted in designating China as a non-market economy country in its antidumping investigations, the result is that Chinese enterprises cannot and are not getting fair and non-discriminatory treatment in antidumping investigations.

Over more than 20 years of accelerating reforms in its economic system, China has established a market economy system. Such a market economy system has not only been written into the Chinese constitution, but is, in fact, a more developed market economy system that the system of some countries which the U.S. has actually recognized as market economies. In recent years, many other WTO Members have adjusted their designations of China's economic system to conform to present-day reality. A very good example is their modification of relevant antidumping policies towards China. Currently, many countries, including ASEAN member states, Australia, New Zealand, South Africa, Brazil, Argentina, Egypt and South Korea have formally granted China market economy status. Modifications made by these countries to their domestic antidumping rules show their active recognition of the achievements of China's reforms and market opening initiatives. This is based on fair and

objective evidence. We hope that the U.S. government can also objectively see the achievements that China has achieved in its reforms and in opening-up and becoming a true market economy.

II. Though The Current U.S. Request For Public Comments On The MOE Issue May Look Like Progress In Terms Recognition Of Chinas Movement Towards Being A Market Economy, In Reality It Is Little More Than A Formality And Is Insufficient To Address The Discrimination Of Current U.S. Policies.

The current U.S. request for comments on the issue of market economy treatment for individual respondents does not consider or solve the broader issue of market economy status for all of China's exporting industries or enterprises to the United States. Consequently, there is still a possibility that Chinese enterprises will be determined as non-market oriented enterprises and thus continue to be subject to unfair and arbitrary investigation rules, which will result in future U.S. antidumping investigations relating to China. Such an outcome is simply unacceptable to China.

The facts on which the United States based its determination in the CFS paper countervailing duty investigation clearly indicate that the United States should reevaluate and change its position on the issue of market economy status for China. Based on the United States, factual determination on China's overall economic development, we believe that if the United States continues to determine China to be a non-market economy and continues to adopt the traditional non-market economy investigation methodologies in its antidumping

investigations, there are serious legal and consistency problems with the U.S. position. Recognizing China's market economy status is the only correct practice that accords with the latest U.S. determination of the current situation of development of China as a market economy. As such, while the current U.S. request for public comments on the MOE issue looks like progress towards U.S. recognitions of China as a market economy, in reality it is little more than a formality to justify application of countervailing duties. This does not represent an objective and fair evaluation of the current status of market economics in China. The United States should recognize China as a market economy rather than merely consider the situation of market-oriented operations of individual respondent enterprises in antidumping cases.

III. If The U.S. Continues To Insist On Designating China As A Non-Market Economy, It Should At Least Recognize That All Chinese Industries Are Market-Oriented Industries And That The Burden Of Proof Should Be On Petitioning U.S. Industries To Demonstrate That A Particular Industry Or Company Is Not Market Oriented.

As admitted by the DOC in its recent findings on China's economic development, the progress of China towards a market economy has been accomplished in most sectors of the economy and with respect to most cost and prices. In the past 30 years, industries in most economic sectors have become market oriented as China has carried out its market-oriented reforms. Currently, enterprises produce, sell and price their products according to the rules of the market economy. There are no State restrictions on price or output. In particular, there is

significant competition among companies participating in of Sino-U.S. trade; industries exporting to the United States have grown into vibrant fast-growing industries with competition as the motivating factor. These are market-oriented industries.

What needs to be stressed is the fact that, while some companies in an industry are fully or partially state-owned, this does not mean that their operational and commercial activities are not market-oriented. In its past antidumping investigations, DOC has also made relevant determinations in this regard by granting separate rate status to these industries. In the cases of sewed cloth hats, spring washers, fireworks and silicon carbide, DOC has specifically determined that "State-owned", be it "owned by all people" or "collectively owned" does not represent "government owned." In U.S. antidumping cases against China in the past 10 years, DOC has admitted many times that China's State-owned enterprises are neither "de facto" nor "de jure" controlled by the government. As for the requirement that all major inputs to enterprises should be purchased at a market price, China is no different than most market economies. China suffers from the very same deficiencies as so-called market economy countries, which all regulate macroeconomic developments as does China. There is no basis to deny the status of market orientation to China's exporting industries on the pretext that the prices of the energy (power and coal) and main raw materials inputs by enterprise are controlled by the government. China does not intervene in these prices any more than do governments in countries that the U.S. considers market oriented. Market economy countries, including the United States, are no exception to selective interventions. Governments in market economies attempt

to influence price trends in the same what that China attempts to influence price trends. This practice is not unique to China and not unique to non-market economies.

In fact, BOFT believes, and the United States has tacitly recognized in its decision to apply countervailing duties to China, that the criteria applicable to determining whether an industry is market orient are too severe and result in many inconsistencies. As a result, the so-called MOI test is not a real test but nothing more than a formality. Virtually all of China's industries are already market-oriented industries. If the United States refuses to recognize China's market economy status, Chinese industries should also be fully entitled to the MOI treatment in antidumping investigations. One example is Canada, also a NAFTA member, which has adjusted its policies relating to the non-market economy issue, namely assuming that all Chinese industries are market-oriented industries in its antidumping investigations. Under this assumption, the burden of proof to demonstrate that an industry in China is not market oriented shifts to the petitioning party.

IV. When Considering The Issue Of MOE Treatment For Chinese Enterprises, The U.S. Should First Abandon The Assumption That Chinese Enterprises Are Controlled By The Government; All Chinese Enterprises Should Automatically Get MOE Treatment. And, The Burden Of Proof To Demonstrate Otherwise Should Be On The Petitioning Parties.

The recent U.S. determination to apply countervailing duties to China was largely based on the development of a market economy in China. This determination in the

CFS paper investigation requires DOC to abandon both the assumption that "Chinese enterprises are controlled by the government" which it has long adhered to in its antidumping investigations and the assumption that the government controls prices and input costs.

It is the view of BOFT that according to the latest U.S. evaluation of China's non-market economy status in the 2006 lined paper antidumping case, the assumption that "Chinese enterprises are controlled by the government" is completely wrong. Similarly, the fiction that Chinese prices and, therefore, costs are controlled by the government has not been established by any facts. In fact, the substance of the preliminary determination in the CFS paper countervailing duty investigation indicates exactly the opposite.

Meanwhile, the recent U.S. decision to apply countervailing duties to China has also weakened the foundation for the applicability of the non-market economy methodology to respondent Chinese enterprises. In its preliminary determination in the CFS paper investigation, the DOC itself pointed out that the Chinese economy is notably different from the Soviet economic model at issue in the Georgetown steel case in the 1980s and that there are no obstacles to the application of the countervailing duties to China under the current economic situation in China. DOC determined that subsidies exist in China, and subsidies are, by definition, distortions in market forces. If market forces do not determine economic behavior, then subsidies cannot distort this behavior. The DOC preliminary determination in the CFS paper investigation can only support a conclusion that the GOC intervenes only

selectively in the market, the necessary prerequisite for find a countervailable subsidy, and that except for such interventions a market economy prevails.

Based on the above, DOC should abandon its presumption that Chinese enterprises are controlled by the government and that prices are somehow determined by the government. All Chinese enterprises should automatically get MOE treatment. And, the burden of proof should be on petitioning U.S. industries to demonstrate otherwise.

V. Given Chinese Enterprises' Entitlement To MOE Status, The Discriminatory Separate Tax Rate Policy Against Chinese Enterprises Should Be Abolished. In This Regard, The Same Policies For Other Market Economies Should Also Be Applied To Chinese Enterprises.

BOFT believes that there are many irrational aspects in the separate tax rate policy ("county wide rate") which the U.S. currently applies to non-market economy countries. These are specifically reflected in the following:

1. The country wide rate policy is not an issue related to domestic price comparability, which allows a distinction in the treatment of respondents in non-market economies.

Regarding the treatment to enterprises of non-market economy countries in anti-dumping, Paragraph 1 of Article 6 of the 1994 GATT and Article 15 of *the Protocol on the Accession of the People's Republic of China* only permit differential treatment in circumstances where

for the problem is price comparability in non-market economy countries as compared to market economies. The core issue is whether China's domestic price or cost data can be used in antidumping investigations, but it does not involve the issue of whether Chinese exporting enterprises' export activities, including export price, are controlled by the Chinese government. Therefore, there is no justification to use a country-wide rate policy, in addition to the application of surrogate country prices, to determine the necessary remedy. After all, antidumping policies are to serve the purpose of remedy rather than punishment. Because there are no provisions allowing a country-wide rate either in the WTO Agreement or in the Protocol on China's Accession to the WTO, this is not an issue related to whether China is a market economy country or not. In fact, the U.S. only adopted the country-wide rate policy ten years after it had treated China as a non-market economy country. Given this, and considering that China is now a member of the WTO, the U.S. should grant China the same treatment as that granted to other WTO members rather than adopt differential treatment based on the pretext that China is a non-market economy.

2. The application of the country-wide rate does not comply with the provisions of the WTO Antidumping Agreement.

As for the application of the country-wide rate for exported goods by companies not selected for individual investigations and not qualifying for the "all others rate", Article 9.4 of the WTO Antidumping Agreement stipulates that the antidumping duty rate should not exceed the weighted average margin of dumping established with

regard to selected exporters or producers. In determining the weighted average dumping rate, based on WTO jurisprudence, WTO members shall eliminate zero margins and negative *(de minimis* margins) as specified in Paragraph 6.8 of the AD Agreement. The rates to be excluded under Paragraph 6.8 include not only margins based on total adverse facts available, but also margins based on partial facts available. Therefore, DOC must calculate the dumping margin for Chinese companies not selected for investigation on the basis of the calculated weighted average antidumping margin found for mandatory respondents, rather than following the current practice of first requiring Chinese enterprises to undergo the separate rate application process and granting the weighted average antidumping duty rate only to those that pass the application process. Moreover, when calculating the "all others" rate, DOC cannot eliminate only the zero and *de minimis* determinations from its calculation, but must also eliminate from its calculation any rates that are based on full or partial adverse facts available. Thus, the current U.S. policies regarding application of the country-wide rate and calculation of the "all others" rate are inconsistent with the WTO Antidumping Agreement.

3. Current DOC Policy is based on a presumption that is no longer applicable to the situation in China.

From the legal perspective, China has met the three U.S. criteria to qualify for application of the "all others" rate and there is no need for each enterprise to submit proof independently in each investigation. Moreover, in the furfuryl alcohol antidumping case against China in 1994,

DOC concluded, according to the Laws and regulations at the time, that China's exporting enterprises were legally independent of the Chinese government. As a matter of actual fact, most Chinese enterprises today have also fully met the criteria of being independent of and not controlled by the government. Indeed, the proliferation of DOC granting separate rate status to Chinese enterprises is recognition of this fact. Based on the two factors above, it is clear that most Chinese enterprises are independent of the Chinese government legally and in actuality. It follows that if the presumption of control and consequent application of a country-wide rate is not abolished, it should at least be changed to "When making exports, China's exporting enterprises are not controlled by the government either legally or in actuality, unless the petitioning party has sufficient evidence to demonstrate otherwise."

To sum up, while the U.S. policy of applying a country-wide rate is applied to non-market economy countries; it is in fact not a problem which is related to non-market economy status itself. It is not consistent with WTO rules, nor does it reflect the reality of the current situation in China. It is the view of BOFT that the policy should be abolished and that the United States should give fair treatment to Chinese enterprise in its investigations.

Bureau of Fair Trade for Imports and Exports

Ministry of Commerce

Peoples' Republic of China

June 21,2007

DOCUMENT FROM FILES OF WANG RENZHI OF NORTHEAST PHARMACEUTICAL GROUP CO., LTD.

On November 16, 2001, under the aegis of the China Chamber of Commerce of Medicine & Health Products Importers & Exporters, the four major companies from the domestic VC industry (Shijiazhuang Pharmaceutical, North China Pharmaceutical, Northeast Pharmaceutical and Jiangshan) sat down together to coordinate respective export quantities for the coming year. Analysis from persons within the industry was that the enterprises were able to sit down together at this particular time basically because VC prices had reached rock bottom, and no one could sustain a further slide; the next reason was, because the country had opened up the commercial products business, from a free competition aspect the enterprises were impelled and had no choice but to seek industry self-regulation. However the discussion process was extraordinarily difficult and because of the intense impact on profits, the discussion reached several impasses. After several stretches of silence lasting ten to twenty minutes, the companies finally reached a basic agreement.

On December 21, 2001, the China Chamber of Commerce of Medicine & Health Products Importers & Exporters again gathered these companies together to negotiate how to operate the agreement reached at the previous meeting, to ensure that each company would be able to fulfill its commitment. The Ministry of Foreign Trade and the Customs General Administration actively supported this effort to pre-verify and sign VC product types, requiring the companies file with the Chamber

of Commerce of Medicine and Health Products prior to export. The implementation of this system would result in orderly exports and stop the continued slide in the prices of VC. Company attitudes changed because of this. In the past they feared they would be unable to sell their goods and fought the pressure to lower prices by seeking to sell larger volumes, now export levels would be stable and the companies naturally wanted to sell for a good price.

On September 3, 2003, in view of recent VC export volume increases and price declines, and the U.S. trend toward increasingly draconian trading policies with respect to China, the Chamber of Commerce convened a "Policymakers Summit of the Vitamin C Branch Board of Directors." The meeting was chaired by the Western Medicine Division Chair Haili Qiao, and Chamber Vice President Changxin Zhang spoke. Director of the Ministry of Commerce Fair Trade Office Danyang Liu, Foreign Trade Minister Tie Wang, Chamber of Commerce Legal Affairs Division Officer Yun Ning, Western Medicine Division Vice Chair Gang Cao and others attended the meeting. U.S. attorney William E. Perry was also invited to the meeting to explain anti-dumping details relating to the United States and items of note for companies with respect to this issue.

On December 9, 2003, the Vitamin C branch of the Chamber of Commerce held a meeting in Shanghai to explore the issue of industry self-regulation, and Western Medicine Division Chair Haili Qiao attended the meeting.

On May 12, 2004, the Vitamin C Branch of the Chamber of Commerce held a meeting in Beijing. The

meeting split over the June production shutdown issue and was unable to come to a common understanding. Western Medicine Division Chair Haili Qiao attended the meeting.

In October 2004, the Board of Directors for the Vitamin C Branch of the Chamber of Commerce of Medicine & Health Products held a meeting, and the companies all believed that they should rely on the Chamber of Commerce's pre-verification and signature method, improve awareness of self-regulation, standardize business procedures, and strive to maintain export prices at reasonable price points of US$4 - $5/kilogram, to prevent the recurrence of the previous two price "avalanches." Haili Qiao stated that in fact earlier, at the end of the previous year, some domestic enterprises predicted that this year Vitamin C prices would fall as the result of expanded production, they studied and formulated a plan for a production shutdown, and that this method of implementation was good and relatively effective at suppressing the magnitude of the decline in prices.

WEEKLY WORK REPORT, DATED JUNE 30, 2006

Weekly Work Report (23rd Week)

June 30, 2006

First Export Department:

The Chinese VC manufacturers' conference held last week produced a certain effect on the marketplace, which stopped the continued fall of the market. This week, at the CPhI conference held in Shanghai, manufacturers have started to be cautious about their quotations or stopped to stop their quotations. We're actively gathering reactions from all the sides.

After the resumption of production of vitamin medicines by Weisheng, lots of products have been exported at a low price in an effort to reduce the stock; therefore there have been no shortages in the spot goods market so far.

In terms of VB1, Zhongjin Corp. of Tianjin is still not doing very well in their supply from the perspective of client reactions. There is still a sign of slight shortage of supply in the whole marketplace.

There has been some slackening in the sales of L-Carnitine.

Second Export Department:

VC and its series:

This week, under the instructions from the plant, we offered a quotation in a range of US$2.7 to $2.8 and there have been some small amounts of business, which have been concentrated in some special regions. There have been no significant movements in the Europe proper

while clients are still holding a wait-and-see attitude. There exists a certain stagnant period. There are a lot of rumours now flying around the market and quotations from Chinese VC manufacturers range from US$2.8 to $3 without any definite conclusion of transactions. Despite our efforts on finding out what is happening, we still haven't heard that there have been any deals made at US$3.

There are 55 tons currently sitting in the warehouse in Hamburg waiting to be picked up by clients.

VB1 and its series:

Long-term shortages in the marketplace has lured other plants to jump into the market and there are rumours that other groups may be entering into the market soon in order to cushion the supply shortages. Since our production has not been going particularly well, we have not made any attempts at quotations. There are no new higher prices coming out of Europe right now.

L-Carnitine and its series:

Small amounts and stable while competitors have more competitive bids. But the overall transactions remain low and it is hard to say that there will be more orders because of lower prices.

Third Export Department:

VC:

Since the news broken that Chinese VC manufacturers will set restrictions on the quantities of VC exports, the first reaction from the market has been that the downward pricing has been put under control. There are signs that the

market is recovering. However, instead of any real changes in the supply and demand, this round of price rise had a lot to do with human factor; therefore clients have begun to engage in a physiological face-off with manufacturers. Most of the clients are holding a wait-and-see attitude. Since users ultimately need to buy those products, some of the clients are slowly pricing at a range from US$2.7 to $2.8/Kg. We're prepared to raise our quotes to around US$3/Kg next week to see how the market reacts.

VB1:

We're facing severe supply shortages, causing many of the contracts to fail to be executed on time. This caused protestations from the clients. At present, some of the clients are demanding that we ship the good by air to ease the urgency. The airfreight above the normal price will have to be paid by the clients and they are also very indignant.

Fosfomycin:

Northeast Pharmaceutical Group Corp (NEPG) is falling behind other domestic manufacturers in fosfomycin sodium and fosfomycin calcium and our sales efforts are facing enormous difficulties.

Fourt Export Department:

1. Chloromyetin: There are many enquiries about quotation this week. Manufacturers at the CPhI conference were quoting US$29-/Kg, but the transaction prices have been lower. We sent a quote of US$28.50/Kg and the final transaction prices should be no less than US$28-/Kg.

2. Sulfapyridine: This week we signed a long-term contract with Auslin Corp. for 84 tons at the price of US$8.10/Kg and also set the price at more than US$8.20/Kg with some small clients.

3. Piracetan: After the registration of COS, manufacturers of piracetan preparation are registering our raw materials for piracetan. This week saw the peak of the registrations. It is estimated that there are more than 60 types of preparations that are produced from the raw materials of our plant. In addition, the general plant called a meeting regarding the market segmentation of piracetan of our plant, that is, to distinguish in the product analysis certificates and outer packaging. The measure will go into effect as of August 1.

Fifth Export Department:

1. There have been no firm offers for Zidovudine so far even though there are many enquiries. Quotations of US$370 to $380/Kg were sent without any contracts signed. It is learned from our client in Brazil that the Brazilian government is not having many tenders right now, and many of the requests are being made to the manufacturers for supplies by the companies that have already won the bids.

2. There are some quotations for Zidovudine in the country with a minimum price of RMB 3,000 Yuan /Kg (US$337/Kg). Other foreign clients are selling Zidovudine at US$355/Kg CIF airfreight.

3. There are many Zidovudine manufacturers popping up recently in Zhejiang and Jiangsu provinces. It is expected that the market price for Zidovudine will substantially tumble when these manufacturers are coming into operation in September or October.

4. There is one enquiry about 650Kg Zidovudine from ELAF Corp. and we sent out a quote of US$216/Kg. We are currently waiting for the final reply from the client.

5. Pyrantel is in a shortage in the market right now but the price is not rising very fast. Some of the regular clients are still buying Pyrantel at the same price of RMB 1,100-1,200 Yuan/Kg. But the quotes in the market have reached RMB 1,400 Yuan/Kg. And even at this price there is no guarantee that the goods are available unless the buyer is a regular client.

6. Since Nippon Corp. found at the Shanghai CPHI conference that a foreign trade firm from Shenyang is underselling Amantadine Hydrochoride (regular price for export Amantadine Hydrochoride at US$20/Kg), causing the company to ask our company for a lower export price for Amandadine Hydrochoride. After several rounds of negotiations, the client finally came to terms with the quote of US$50/Kg.

Import Department:

1. Epichlorohydrin

   The domestic has not been affected by anti-dumping sanctions and the operations of Tianhua plant, with pricing still ranging from RMB 24,500-25,000 Yuan/ton. There are nearly 300 tons of stocks in our plant and we still have the time to wait for further information from the market.

2. 1,4-Butanediol

   Since the BASF plant in Malaysia has run into troubles, there is correspondingly supply crunch. After one week of efforts at coordination, 100 tons can be supplied from the German headquarters in August, 32 tons from BASF Ulsan plant in Korea in July, 32 tons from Japan BASF at the end of July, in addition, there is a stock of 75 tons, the Production And Technology Department and Planning Department have been notified to secure small amounts from within the country for replenishment.

3. Pyridine

   The domestic market is brewing with price increases with foreign quotes from Pyridine at US$5.8-6/Kg. If there are new orders from our plant, foreign manufacturers will be able to supply goods around the end of August and the prices will be much higher than the price of the previous shipments at $US4.85/Kg.

4. Propargylalcohol

   30 tons of such goods were ordered with BASF. It is expected to arrive at the plant at the end of August since they will be shipped from Germany in mid-July.

5. Metal Magnetic Detectors

   Since our letter of credit has been issued already, the Japanese supplier agreed to make efforts to deliver the goods at the end of July or early August.

DOCUMENT TITLED "2006 VC AND PRODUCT LINES AMERICAN MARKETING AND SALES STRATEGY"

Strategic background:

In 2005 the global VC industry underwent a rapid strategic shift in capital and technology, investment mergers and acquisitions continued to increase and hot markets continued to emerge. In the face of intense pressure, both challenges and opportunities were present for China's VC enterprises.

1. **China's VC enterprise operating costs greatly increased**

   At the start of 2005, after VC prices exploded and theoretically recovered, there continued to be low-price confusion in the marketplace. Prices at $3/kg could not be maintained for long, and such factors as explosive increases in world oil prices, tightened supplies of domestic gas and electricity, the pressure to increase the value of the *renminbi*, international organizations forcing certification, state environmental protection inspections to meet standards, increased costs and reduced profits for various items followed one after the other.

2. **Severe surpluses in global VC production capacity**

   At the beginning of 2005, China completed work to achieve 100,000 tons of VC production capacity; added to DSM and BASF's 32,000 ton production capacity, with a situation in which

global VC consumption levels had increased to 100,000 tons, there was still a surplus of almost 30,000. Thus in 2005 factors that sustained low-price position operating results for VC were forced by high operating costs to stop production.

3. U.S. company antitrust suit filed

In 2005 an antitrust suit was filed in the U.S. against China's VC enterprises using "price collusion and monopoly" as cause. This is the first lethal antitrust lawsuit encountered by domestic enterprises and it could possibly drag on for a long time at enormous cost that could result in our VC enterprises closing their doors and shutting down. Correctly dealing with the lawsuit and minimizing losses to the lowest level possible will be a major test of the courage and intelligence of China's VC enterprises.

4. The two largest VC [manufacturers] in the world rapidly shifted capital to China

On May 12, 2005, DSM announced that it was pursuing a vitamin industry consolidation strategy, concentrating the vitamin C shift to England's Dalry plant for manufacturing. In the third quarter it closed a 15,000-ton VC raw materials plant in New Jersey in the United States. In November 2005, DS11 purchased North China Pharmaceutical shares for US$164 million in cash and share participation in the North China Pharmaceutical Company, forming two new joint venture companies chiefly doing business in vitamins and antibiotics with DSM

to hold 49% of shares in each. This major step was both disastrous and fortunate for other VC enterprises and the results were soon evident. Prior to this, BASF China's wholly owned VC compart had signed a contract to settle in Shenyang. At a size of 18,000 tons, it was. mainly engaged in additional processing of VC products. BASF immediately closed its 400 -ton VC manufacturing plant in Denmark.

5. **In 2005 China's VC exports again reached historic highs**

China Customs statistics for January to November 2005 totaled 70,441 tons in exports, an average of 6400 tons exported per month. Total annual exports were expected to be about 7700 [sic] tons, some 10,000 tons greater than 2004 export volume of 67,852 tons. It was the most rapid single-year increase in exports. Of these, the greatest volume increase in exports to the United States was with Welcome - a relative increase of 117% - next was Jiangshan with an increase of 32%, Weisheng with 20%, Northeast Pharmaceutical fell 10% and Hualong had a self-reported business exports increase of 138% for all ports.

In the face of a complex, diverse VC market, people were forced raging into a merger and acquisition trend. We must re-consider and conscientiously analyze to adjust our thinking and formulate feasible sales proposals.

One. Analysis of current competition

(One) Analysis of competitors

1. DSM/Hebei Welcome Pharmaceutical Company: Welcome currently has VC production capacity of 20,000 tons and DSM's manufacturing plant in England has a production capacity of 1.8 [sic] tons. By working with DSM, the support of DSM's global sales network and its one-step direct connection method to advance VC production technology and Roche's experience with mature production of high value added VC products, North China Pharmaceutical suddenly had a position on the vitamin market. DSM did not necessarily expect more than 20,000 tons, but DSM certainly won't use a "price strategy" method to plunder the market. Its method of cooperating with other domestic VC enterprises will also be a breakthrough and in the next 2-3 years more major changes will take place in the global VC model.

2. Weisheng Pharmaceutical: Current VC production capacity has a surplus of 30,000 tons, and it is an important cooperative partner with Coca-Cola and other renowned world companies. Early in 1998 the company established a VC processing workroom with annual capacity of 2,000 tons, producing VC sodium and VC calcium. In June 2004 a 20,000-ton VC engineering project was completed and production capacity pushed to an increase of 30,000 tons. In July 2004 a 7000 tons/year VC deep-processing project broke ground and in October 2005 the project went smoothly into production. VC sodium, VC calcium, coated VC, VC pills and 29 other product types were launched. Some of the products have had success with DSM and BASF high-end consumer groups. From December 19 to 22, 2005, the Coca-Cola Company designated third-party

entity NFPA DAFE to perform a four day, on-site quality inspection and received a high assessment Prior to this, Weisheng Pharmaceutical's manufacturing easily passed the related social responsibility inspection.

In 2005 another bright spot light for the company was the improved "VC expert" market position and advanced vitamin formulation for the domestic market - building an empire with "Guo Wei Kang" as its first vitamin product.

3. Jiangshan Pharmaceutical: In 2005 VC production capacity was 20,000 tons and main exports were VC derivatives and pills. It has a good reputation on the international market, through complete sales networks established by Helm and AMC sales reps in the European and U.S. markets. However because VC product prices have been low recently, distributor profits were limited, and although Jiangshan Pharmaceutical mainly sells high value added products business profit margins were not as expected and in 2005 the company parted ways in its cooperation with U.S. representative AMC. From the attached Jiangsban Pharmaceutical VC product catalog, it is not hard to appreciate its unique competitive power. See attached Table 1.

4. Shandong Zibo Hualong Company Ltd.: It is the only domestic private VC company. VC raw materials are its dominant product and annual production capacity is over 10, 000 tons. The company has its own electrical plant, wastewater processing plant and coal mine. For VC, it employs a two-step advanced fermentation technology, introducing the U.S. Katama Company three-part evaporation device, air pressure machine and the Belgian VC sodium centrifuge. Its product quality has approval from major European and U.S. users. Because

the company has always been able to get local government support, the company has relative superiority in termils of work force and industrial raw materials prices, and people within the industry universally believe that it has room to grow. On the international market, it performs using a flexible pricing mechanism, being highly competitive and rapidly expanding, and the company continuously performs well at international exhibitions. In 2005 VC export volume was more than two times that of the previous year and it has started making advances in the areas of VC sodium and its derivatives.

5. Anhui Tiger Biotech Company: A Chinese and foreign joint investment enterprise, annual export of various types of VC products is about 5000 tons. Main products are raw VC powder, VC phospharte (35%, 25%), coated VC (90%, 93%) and VC magnesium phosphate. Its VC phosphate export volume is number one nationwide. The company is particularly concerned with VC product requirements for the feed industry, the food products industry and the cosmetics industry.

(Two) Target market analysis

China's Vitamin C mainly is sold to the United States and the European Union. Of China's vitamin exports, U.S. demand comprises about 30 percent and the European Union about 40 percent In 2005 import volumes for the ten largest nations in order were: the United States, Germany, Japan, Belgium, Holland, England, Brazil, Spain, Korea and Italy. See attached Table 2 for January to October 2005 China Customs VC product national sales statistics.

From China Customs statistical data it is not hard to see that the United States and Germany are the largest

importers of China's vitamin C and the largest consumer regions for vitamin C worldwide. As China expands into doing business overseas, Germany's market position weakens in terms of its role as gatherer and distributor of pharmaceutical raw materials worldwide. Global business is moving toward direct connections and easy growth, so although other countries may import small basic quantities of VC from China, the numbers are increasing. Thus Northeast Pharmaceutical's VC is important in Canada, Argentina, Brazil, Columbia, Mexico, Chile and Peru.

(Three) Advantages of Northeast Pharmaceutical's VC:

1. Compared to other enterprises, Northeast Pharmaceutical's VC entered the international market at an earlier time and its market "recognition rate" is high, thus it has a certain power on the international VC market. It has larger, faster, and more direct expansion of market opportunities.

2. Sufficient use of opportunities to cooperate with BASF. This is a business opportunity incomparable to that of any other enterprise.

3. Northeast Pharmaceutical exports numerous types of products and is better able to use "bundling" business opportunities with common regular customers and such products as VB1, L-camitine, amino acids, etc. The overall superiority of the many BASF Group products has turned into an excellent opportunity for us to be victorious.

(Four) Disadvantages of Northeast Pharmaceutical's VC:

1. Incomplete standard VC and similar product lines, only one standard powder and distribution is not regular. Granular size control is poor and there is too much fine powder.

2. The VC line of products has no competitive superiority in terms of cost. For example, VC sodium and VC calcium.

3. Quality incidents happen frequently and explanation is that production is not sufficiently stable. In the near term, quality issues have arisen and have already created strong customer reactions to such issues as clumping, color changes, foreign objects and damaged packaging; all of which have greatly constrained our VC export foreign exchange. If this persists long term, then the market share we developed and created will quickly narrow. Quality is vital.

4. VC hardware and facilities await further improvement, the quality control room and the VC production site elicited concern to the inspector's first impression and our VC sodium site and quality control room aren't ready to be seen.

5. Market competition is cruel and VC is already not an ordinary commercial product. It has become a necessary product for people, so prices are very sensitive. Northeast Pharmaceuticals' current VC costs need further reductions to benefit from market competition.

6. Document registration and customer service are not prompt and there still exists a gap with product quality audit results and customer demand, and this affects export orders.

(Five) Northeast Pharmaceuticals VC market opportunity:

1. Under strong pressure from China's VC enterprises, BASF's Japanese plant and DSM's Scottish plant were forced to withdraw from the market and die a natural death. The world's VC market supply and demand relationship is quickly moving toward equilibrium, and prices will return to reasonable levels and move quickly toward stability.
2. Looking at the future potential of the Asian and Latin American VC markets, global VC consumption levels will grow at a steady pace.
3. In 2005 the avian flu virus appeared at various locations worldwide and the medical/pharmaceutical industry, the food products industry as well as the feed industry placed an intense degree of emphasis on VC.

Two 2006 VC sales market targets in America

Under the guidance of President Dong's strategy of "producing great formulas and producing precision raw material pharmaceuticals," the 2006 VC export target for the American marketplace was 10,000 tons. The VC line of products would strive to achieve 2000 tons. High value added VC product lines made with precision and strength have established a market position for Northeast Pharmaceutical's VC and product lines.

Three. 2006 sales market strategies in the Americas

1. Continued emphasis on cooperation with the BASF sales alliance and the progress of "Sinocization" in the VC industry have truly created a "strong alliance" for "mutual benefit." To the greatest extent possible, we will strive to make BASF VC global purchasing orders reach 5000 tons through expert management, priority preparation and complete follow-through service.

2. Today as international trading pressures continually increase, flexible operations in compliance with conventional methods of international business, actively expanding markets in the Americas, especially sales price quotes, marketing and information exchange in the United States, that is, must avoid strategies that would appear counter to sales growth and thus speak no further about the antitrust lawsuit

3. In 2006 global VC production basically completed the shift to China and VC enterprise VC sales internationalization was also complete. Because of this cultivation it created a precise and strong benefit for solidifying the sales team and was critical to Northeast Pharmaceutical's "VC defense battle."

4. China's VC enterprise manufacturing was established on a low-cost, large-scale basis, and in addition to a number of unstable factors, export prices have been an important indicator of the market's initial shape, determining the enterprises' survival and development. Production volume and inventory furthermore are a measure of the equilibrium of the supply and demand relationship, and because of this price, production output and inventory are of necessity special concern to us every minute of every hour.

5. Production periods, delivery times, overall planning and deployment of export orders, control of production costs, optimized resource use, realization of maximum enterprise profit, sustaining production continuity and pursuit of the optimal economic model - to improve the overall might of Northeast Pharmaceuticals.

6. Strengthen self-regulation in the VC industry, but don't rely completely on the "gentlemen's agreements" of the Chamber of Commerce.

7. Change the market development strength of the VC line of product types, reduce costs, improve quality, optimize investment, focus on actual performance, and improve our factory's overall competitiveness. "It is preferential to abandon new product research and absolutely not lose market advantage." In the face of the recent BASF wholly owned investment company, our first priority must be projects that require low investment and produce fast results. "Fighting to be first is step one, lagging behind a half step is a mental burden." To construct a product sales group for the specialized VC line of products, with specialists in charge, to carry out a series of individual products and establish client contacts one by one, it is necessary to formulate a time table with requirements and quantitative norms to be reached at each stage.

8. Improve network construction, support clients with emphasis on the U.S. market, like PIL, ACT, Westco, Eastwest, Leiner, Anmar, Suzhou, UFI, etc. In order to prevent and spread around operating risks, establish a past due warning system for capital, continuing to move forward, to protect against misfortune and misspent effort.

9. Thoroughly study VC market trends, accurately grasp the pulse of the market, formulate feasible pricing strategy, get large orders and major customers, and focus on our factory's technology level and user demand to get "what is there and what isn't there."

10. Every country is a target market. Use export data from China Customs to analyze competitors' market share, competitive strength and relative market capacity, then quantify our export product types and the chief direction in which our efforts take us. Taking the United States as an example, in July and August 2005, Weisheng and Welcome expanded their VC export volume to the U.S. The explanation is that DSM closed its New Jersey VC factory plant and this was the result of said release on market performance. In 2005 BASF purchased less VC from our plant, package style and delivery ports were different; predicting that the superiority of the BASF VC line of products is weakening and in terms of BASF market pressure, there is room for competition in China's Jiangshan and Weisheng VC product lines. For details, see Table 4.

These are not ordinary questions. In 2006 Northeast Pharmaceutical will face even more grim market concerns, but we believe that we have the ability to win in the "VC defense battle."

Friday, December 30, 2005

Table 4. Users and Distributors of VC and Similar Product Lines in the United States

No.	Company name	Sales range and purchasing orientation	2006 targets and steps to take
1	DSM	The largest manufacturer and distributor of VC and product lines in the United States. Its networks are complete, it is strong, it is highly knowledgeable about the market, and after purchasing stock in Northeast China Pharmaceuticals, in the second half of 2005 large quantities of VC were purchased from Northeast China Pharmaceuticals. The two are linked strategically and have even more solidified DSM's hegemony over global VC	Watch closely to understand its general trends

2	**BASF**	Its sales networks radiate throughout the entire American continent, it has about 5000 tons in annual VC purchasing agreements with our factory. It is strongly competitive in the market for the VC line of products.	Improve cooperation, strive to get all VC orders.
3	**WATSON**	Famous U.S. food additive supplier that purchases 400-500 tons of VC and products from China annually. Starting in 2004 our factory began to wrest control of their purchasing orders from Welcome.	Improve communication, urge the completion of contract renewals and secure transfer of funds.

4	**AMC**	Famous U.S. seller of VC and products. VC is purchased mainly from Weisheng and product lines are contractor sales from Jiangshan on the U.S. market, but company controlling stock is held by PIL. .	Watch closely, improve exchange of information.
5	**PIL**	Famous U.S. distributor of food additives, it mainly sells our company's VC and related products. 2004 imported over 2800 tons from our plant and in 2005 imported 2300 tons of VC and related products.	Improve overall cooperation, get back share stolen by developing market.
6	**UNIVER**	U.S. agent of Shijiazhuang Weisheng Pharmaceutical Company	Watch closely.

7	**HELM NEWYORK**	Chiefly sells Jiangshan and Weisheng VC and related product lines, has indirectly purchased 1-2 containers from our plant.	Actively strive to get orders.
8	**COCA-COLA**	Famous global beverage company. The U.S. concentrate plant and juice plant purchase large quantities of standard VC powder from China, but their granular size demands are mainly for the purchase of 500 kilograms bags of VC powder, and in addition to this Jiangshan, Northeast Pharmaceutical and other plants don't have equivalent supplies.	Improve our plant's VC product quality, strive to get even more concentrate plants to approve our plant's VC.

9	**NBTY**	Nutritional and food products company that purchases Chinese VC products from different channels each year. Quality requirements are quite high.	Improve DC-level product quality to strive, increase order quantity.
10	**LERINER**	Largest U.S. user of DC97, OCT production plant, purchased from Jiangshan, Weisheng and Northeast Pharmaceutical. In 2004 and 2005 signed contracts to purchase 300 tons and 500 tons, respectively, from our factory.	Expand cooperation, control risk, strive to get 2006 orders.

11	**PERRIGO**	Second largest user of DC97 in the U.S.; its quality standard demands are quite high and it is a loyal customer of BASF and Jiangshan. Currently our factory's samples have not received final approval.	Control DC97 granular size, improve color saturation, improve product stability.
12	**SUZHOU-CHEM**	Mainly sells Northeast Pharmaceutical's VC, starting in 2004 signed purchasing contracts with our plant for 400 tons of VC per year.	Improve cooperation. Shared service improvements to final user.
13	**ALCHEM**	Retailer in the western United States. Signed large order for VC from our plant in 2004.	Strive to get order in 2006.

14	**ACT**	U.S. East Coast sales territory, represents our plant's deliveries of VC to P&G and Nestle.	Strive to get 2006 orders from P&G and Nestle.
15	**UFI/GE**	Famous U.S. distributor of VC, mainly sells Weisheng and Welcome VC. In 2004 was an important VC cooperative partner with our plant.	Improve cooperation, share expanded marketplace.
16	**EASTWEST**	Important VC and related product retailer on the U.S. West Coast. Each month purchases 2-3 containers of VC or DC97 from our plant.	Maintain stable and healthy relationship. Build our plant's DC97 market.
17	**ANMAR**	Main business is our plant's DC97 products. In 2004 and 2005 signed contracts for 150 tons.	Active support, expanded sales volume.

18	**AMERICAN INGREDIENTS**	2004 to 2005 working bard With PIL Company to sign a purchasing contract with our plant for 300 tons of VC.	Strive for 2006 purchase order.
19	**E.M. SERGENT**	Previously an important customer of our plant, now selling Weisheng DC97 products.	Work to make a contact, renew cooperation.
20	**VANTAGE**	U.S. West Coast DC95 and DC97 distributor	Co-development of DC95.

MEMORANDUM OF NOVEMBER 3, 2002 MEETING OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS, WRITTEN BY WANG QI OF JIANGSU JIANGSHAN PHARMACEUTICAL CO., DATED NOVEMBER 5, 2002

On November 3, 2002, the VC Branch of China Chamber of Commerce for Import and Export of Medicines and Health Products held a meeting in Panjayun, Beijing, to discuss the current market conditions of VC products and the countermeasures the Chinese VC manufacturers will take. The following entities and individuals participated in the meeting:

CCCMHPIE:	President Feng, Qiao Hai, Wan Ning
Northeast GPF:	Chen Gang, Du Chengxiang, Wang Renzhi
Jiangshan:	Kong Tai, Wang Qi
Weisheng:	Feng Zhenying, Yu Tao, Wang Yaguang, Jiang Zhanxu, Guo Guoping
Welcome:	Huang Pinqi, Zhang Yingren

Key points of the meeting and messages are recorded as follows:

1. Market Information and Exchange of Views of the Current Situation

- Roche's plant in Scotland reduced output starting from September, in order to prepare for equipment upgrade that will result in an 8,000-tons increase of production capacity in the plant. It is expected the upgrade will by completed by January of next year, and the plant then will have an annual capacity for 23,000 tons.

- Chen Gang said that Northeast GPF signed an agreement with BASF this year to supply 350 tons/month at $ 3.26/kg, and the destination was the United States. Because of this agreement, BASF halted production in its plant in the United States in June, but has been keeping its granule VC production. Since the price of VC has been increasing rapidly during the second half of this year, BASF agreed to raise price by $0.10/kg at the request of Northeast GPF.

  BASF visited Northeast GPF recently to negotiate purchase agreement for the next year. Northeast GPF asked for $4.50/kg, whereas BASF offered $3.80/kg, threatening to resume production at its North Carolina plant if Northeast asks more than $3.80/kg. BASF will visit Northeast GPF again to further the negotiation on November 20.

- General Manager Kong of our company reported at our meeting that Roche had inquired our company about the possibility of providing 6,000 tons of VC and was declined. General Manager of Weisheng said they had also received the same inquiry from Roche. Welcome did not receive such inquiry.

- I learned from an exchange with Du Chenxiang of Northeast GPF on the sidelines that Northeast has done pretty well this year with DC export (more than 500 tons) but the sales now stagnated when the price reached $4.70/kg; the export of Na has been all right (no figures provided), but the export of Ca rather poor with a very small amount.
- I learned from an exchange with Wang Yaguang of Weisheng on the sidelines that Weisbeng's DC export has exceeded 500 tons this year.

2. Quantity

Between January and September, Chinese VC export is 31 ,669 tons (according to statistics of CCCMHPIE), or 32,300 tons (according to statistics by Customs), and of which according to the statistics of the Business Association:

	Self-operated export	Total
Northeast GPF	9,652 tons	9,668.8 tons
Jiangshan	7,465.15 tons	7,567.7 tons
Weisheng	6,273.227 tons	7,578.43 tons
Welcome	4,922 tons	5,996.775 tons

Adjustment: Each manufacturer would be given an extra quota of 1,000 tons for this year, and the total production will be 43,000 tons for the year, but we are asked to tell outsiders that the total production in 2002 is no more than 40,000 tons. Volume for each manufacturer after the adjustment is as follows:

	Quota for November (Including adjustment)	Yearly Total
Northeast GPF	1,644 tons	13,500 tons
Jiangshan	1,294 tons	10,500 tons
Weisheng	1,124 tons	10,000 tons
Welcome	1,298 tons	9,000 tons

3. Pricing

   No consensus was reached about price at the meeting. The minimum price for export remains unchanged. Each company can provide price quote based on its own judgment, and no specific restraint or requirement is imposed.

4. Next VC Branch meeting is scheduled for January next year, and date and location of which are to be decided. At that time, Jiangshan will have taken up the position of the Chairman of the Council.

Written by: Wang Qi November 5, 2002

NOTICE OF THE CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS REGARDING PUBLISHING THE INDUSTRY AGREED EXPORT PRICES FOR THE KEY COMMODITIES FOR THE SPRING OF 2003

China Chamber of Commerce for Import and Export of Medicines and Health Products

(2003) *Yi Shang Zi* No. 31

Notice regarding publishing the industry agreed export prices for the key commodities for the spring of 2003

To relevant member enterprises:

Pursuant to the opinions of the major enterprises, the industry agreed export prices for the key commodities in the western medicine category have been revised. Now, the new price list has been printed and distributed to you. Please abide by the list in implementation. Please pay attention to the following when carrying out the list:

1. The agreed prices are the minimum prices. We put the limit on the floor prices but not the ceiling prices;

2. When the price term in a contract is not in accordance with the agreed price term, one shall voluntarily convert the price term to be consistent with the agreed price term, so as to facilitate the application for the export license and customs clearance.

3. The agreed price of Saccharin sodium shall take effect on Apr 1, 2003, and the agreed prices for other commodities shall take effect on Apr 15, 2003.

Confidential

List of export prices of commodities reviewed by Customs and agreed by the industry for obtaining an export pre-authorization stamp from the chamber, for Apr. 2004

Name of the product	Commodity Code	Agreed price (USD)	Unit	Price Term
Vitamin C	29362700		KG	CIF
Paracetamol	29242920	1.9	KG	FOB
Saccharin Sodium	29251100	2.8	KG	FOB
		2.85	KG	CIF India
		2.83	KG	CIF Asia
		2.88	KG	CIF Europe, South America
		2.92	KG	CIF US

Seal of China Chamber of Commerce for Import and Export of Medicines and Health Products

List of industry agreed export prices of Heparin Sodium, Penicillin

Industrial Salt, and Tetracycline Hydrochloride for Apr 2003

Name of the product	Commodity Code	Agreed price (USD)	Unit	Price Term
Heparin Sodium	30019010	600.00	KG	FOB
Penicillin Industrial Salt	29411099	10.00	1 bn *(translator's note: the original is not very clear.)*	FOB
Tetracycline Hydrochloride	29413012	11.00	KG	FOB

Seal of China Chamber of Commerce for Import and Export of Medicines and Health Products

MEMORANDUM OF MAY 28, 2004 INTERIM MEETING OF THE VITAMIN C SUBCOMMITTEE, DATED MAY 28, 2004

Interim Meeting
May 28, 2004

MEMORANDUM

Date: May 28, 2004

Place: Main Conference Room, 3rd fl., Main Office

Presiding: Kong Tai

Present: Li Weiwen, Huang Songhu, Zhang Yajun, Wu Youfa, Xi Chuanlin, Wang Puhuai, Hua Juping, Ma Yiping, Wang Jian, Liu Qixun, Yuan Xun, Chou Wenguang, Wang Yongbin, Huang Jianmin, Lu Wei, Bao Kede, Mao Jianping, Xia Xudong, Zhu Tao, Wang Qiling, Dai Suxiang, Shao Hongwei, Ge Liang, Dai Yuqi, Wu Yuansheng, Xue Bingnan, Zhu Peixi, Tao Zequn, Xu Xinhui, Yang Canjun

Absent: Xu Jianming (on assignment)

Record Keeper: Shi Yaru

Managing Director Kong:

1. Cancellation of Plans for Production Stoppage in June

Four domestic ascorbic acid manufacturers (Shijiazhuang Vitamins, Hebei Welcome Pharmaceuticals, Northeast General Pharmaceuticals and Jiangshan Pharmaceuticals) reached a production stoppage

agreement last year. They planned to stockpile in Shanghai warehouses 150 tons of product each month from January through May and then in June to stop production to overhaul equipment. However, there was a change in circumstances. Shijiazhuang Vitamins unilaterally tore up the agreement. The four companies held a meeting on May 12 in Beijing to coordinate the production stoppage but Shijiazhuang, using the pretext of conducting a trial run, announced it was only stopping the old production line and that the new 15,000-ton production line, where on May 8 a trial run had been formally launched, would not be included in the production stoppage plan. As a result, the agreement fell apart and plans for ceasing production in June were canceled.

On May 24 the responsible officials from Hebei Welcome, Northeast General and Jiangshan held talks in Nanjing and reached an agreement that they would stop production at an appropriate time in the second half of the year, the length of the stoppage to be determined by further discussions among the three companies. Whether or not it would possible to stop production in the latter half of the year depended on Shijiazhuang's behavior.

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MEMORANDUM OF MAY 19, 2005 MEETING OF THE VITAMIN C SUBCOMMITTEE, DRAFTED BY WANG QI OF JIANGSU JIANGSHAN PHARMACEUTICAL CO., DATED MAY 22, 2005

From: Wang Qi [wq@aland.com.cn]

Sent: Sunday, May 22, 2005 7:53 AM

To: Tai Kong; Wang Cheng; wangqiang

Subject: JJPC0033645-VC Chamber of Commerce Meeting Memo

Attachments: JJPC0033547_

GM Kong, GM Wang, Wang Qiang (Assistant to GM),

Greetings!

Please see attached for your reference. Please contact me should there be any unaddressed issue.

Best regards,
Wang Qi

Yourlogo, Inc. Insert a catchy tag line here

Wong Qi Jiangsu Jiangshan Pharmaceutical Co.

Manager of Imp. & Exp. Div. No. 20 Jiangshan Road,
Jingjiang, Jiangsu
P.R. China 214500
tel: +86 512 68244598
fax: +86 512 68249548

wq@aland.com.cn mobile: 13701439933;13382189783

VC Chapter of the Chamber of Commerce Dalian Meeting Memo

Time: May 19 2005

Place: Dalian

Attendees: The Chamber- Qiao Haili, Wan Ning

Northeast GPF- Zhang Lianke (Vice Economist General), Wang Renzhi

Weisheng- Feng Zhenying, Wang Yaguang,

Welcome- Huang Pinqi, Zhang Yingren, Manager Tang (female)

Hualong- Manager Liu

jiangshan- GM Kong, Wang Qi

1. Market information exchange:

Huang Pinqi: The export quantity for 1Q was 20,000 tons, among which, the March export was 7,900 tons. Based on this trend, the total export volume from China for this year will exceed 80,000 tons;

Qiao Haili: As the price is gradually decreasing, he hopes that each manufacturer will take the possibility of anti-dumping highly seriously.

Wang Renzhi: The situation for this year is different from that of 2003. The newly added production capacity has already far surpassed the production capacity that DSM is supposed to decrease. Judging by the relationship of supply vs. demand, the price will continue to decrease. At present, the floor rate of Northeast GPF is USD3.40/

kg. From the point of view of its new leadership, they would store the product as inventory, rather than sell if the price is lower than the cost (cost: USD3.40/kg?). Its current inventory is below 1,000 tons;

Manager Liu of Hualong: The cost of Hualong currently is between RMB 27,000 - 28,000/tons. They expect that after the completion of the power plant, the cost may be reduced to USD2.70-2.80/kg (calculated value in theory);

GM Feng: He hopes that steps will be taken to stabilize the price properly, such as each manufacturer reducing its production volume proportionally?

GM Kong: 1) He does not agree the proposal of proportionally decreasing production by each manufacturer, because, the decrease of price in the market was caused by the increase of production by several factories; Jiangshan's production volume is still 15,000 tons and did not increase production volume per se. Therefore, it will not participate in this production reduction;

2) If the price continues to decrease and this may trigger anti-dumping (*investigation, translator's note*), then we all will be finished;

3) The total demand of the market is fairly stable. It will not bring new demand because of the price decrease. He hopes that everyone uses more senses, rather than simply cutting down the price. Can each manufacturer control its production volume appropriately?

2. Proposals made as a conclusion by Huang Pinqi:

1) Using the current prices for obtaining the export pre-authorization stamp as the floor prices to export VC for each manufacturer;

2) During July and Aug., each manufacturer will stop fermentation for about 20 days so as to reduce the production volume appropriately and ultimately relieve the situation that supply surpasses demand;

Weisheng/Welcome/Jiangshan expressed that it principally agreed to the proposals; Northeast GPF/Hualong will bring the proposal back and have its company leadership make the decision. As to the details on how to execute the proposals, manufacturers will decide when they meet again in June at the Shanghai CPHI event.

3. Explanations:

I have the following two explanations based on my observations of the meeting:

1) Both Weisheng and Welcome are very inclined to the idea of production shutdown/production limitation. It may signify that these two manufacturers are currently under the pressure of high inventories and that the current price level has made it very hard for them; (information that we got before the meeting echoes that they have high inventories.)

2) As for the proposal for production shutdown/limitation, each manufacturer will as usual have its own calculations. In addition, due to the damage to the agreement caused by Weisheng last year, it is still an open question as to what extent the consensus made at the meeting will be implemented. We should have a sober estimate of the situation.

Draft: Wang Qi May 22, 2005 Sunday

Copy to: GM Kong, GM Wang, Wang Qiang (Assistant to GM)

IMPORT/EXPORT DEPARTMENT JUNE WORK SUMMARY, DATED JULY 6, 2003

I. EXPORT

REDACTED

4. Market Situation:

June market price kept on rapidly falling, from the beginning of the month 9.00 USD/kg, dropped to 7.00 USD/kg at the end of the month. Among domestic manufacturers, Wei Sheng and Welcome headed the fall.

5. Chamber of Commerce Meeting:

On the 11th of this month, our company organized a meeting on market analysis among the six domestic manufacturers and the China Chamber of Commerce of Medicines & Health Products in Qing Dao. We all agreed to set the floor price at 9.20 USD/kg, hoping to slow down the speed of market price falling, also hoping to strengthen the confidence of middle suppliers and consumers. Looking at the effect a couple of weeks later of this month, the effect of this price limitation is very limited, every manufacturer quoted prices lower than the floor price.

REDACTED

Import/Export Subsidiary: Wang Qi July 6th, 2003

Cc: President Kong, President Ji, President Wang

Cc: Liu Yin Zhen, Zhu Jiang

EXCERPTS FROM A JANUARY 28, 2005 SPEECH OF KONG TAI OF JIANGSU JIANSHAN PHARMACEUTICAL CO., "RECOGNIZE NEW TRENDS, DEVELOP ON BOTH FRONTS, AND BUILD A HEALTHY, SUSTAINABLE AND HARMONIOUS JIANGSHAN"

Recognize New Trends, Develop on Both Fronts, and Build a Health, Sustainable and Harmonious Jiangshan

Speech on the company's 2004 summary and commendation meeting

Kong Tai

(January 28, 2005)

Dear employees,

Today we are gathering here to review our achievement last year, to exchange experiences, to commend performance, to lay out our plan for 2005, and to mobilize everyone to recognize the trend, take the opportunities, and work hard for a healthy, sustainable and harmonious Jiangshan and do everything we can to accomplish our goals for 2005. My speech has three parts:

Part One Review of 2004

Redacted

Part Two Prospect of 2005

Redacted

II. Chinese VC manufacturers are fluctuating in their capacities

After two years of expansion, all of the four biggest Chinese VC manufacturers have a capacity for more than 15,000 tons, and among them, Weisheng has a staggering capacity for 30,000 tons. Shangdong Hualing, once in "coma," has developed rapidly with a capacity for 5,000 tons. These VC enterprises, mediated by Chamber of Commerce for Pharmaceutical and Health Products, took measures last year to limit production to protect price and to ensure a "soft-landing" of the price plunge, but in the long run, such allegiance is vulnerable and will easily succumb to the temptation of profit and before the test of time. To survive the new round of competition and come out of it better, we must depend on ourselves, becoming bigger and stronger. Only by knowing the enemy and knowing yourself, shall you be able to fight a hundred battles with no danger of being defeated.

Redacted

Part Three Work Plan for 2005

Redacted

Dear colleagues, our achievement has been a source of inspiration, and our goals motivate us to go forward. Let us come together in a high spirit, let us explore and innovate, and let us work diligently to build a healthy, sustained and harmonious Jiangshan and to make newer and bigger contributions to the fulfillment of this year's goals.

Finally, let me wish all of you and your families a happy, healthy and uplifting new year!

Thank you, everyone.

SELECTED PRETRIAL FILINGS IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

AFFIDAVIT OF QIAO HAILI, HEAD OF THE VITAMIN C SUBCOMMITTEE PURSUANT TO THE COURT ORDER OF JULY 11, 2012, DATED AUGUST 5, 2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MASTER FILE 1:06-MDL-1738 (BMC)(JO)

IN RE VITAMIN C ANTITRUST LITIGATION

This Document Relates To:

Animal Science Products, Inc., et al. v. Hebei Welcome Pharmaceutical Co., Ltd., et al., Case No. 1:05-CV-00453(BMC)(JO) (E.D.N.Y.)

AFFIDAVIT OF QIAO HAILI PURSUANT TO THE COURT ORDER OF JULY 11, 2012

I, QIAO HAILI, hereby state as follows:

1. I am a citizen of People's Republic of China and a retired officer of the China Chamber of Commerce of Medicines and Health Products Importers & Exporters ("Chamber"), where I held the position of Director of its Western Medicine Department from 1992 through March 2007. From October 1997 through my retirement I also served as Secretary General of the Chamber's Vitamin C Sub-Committee, created at the direction of the Chinese government to regulate and coordinate the export of vitamin C. I reside in Beijing, China and submit this affidavit pursuant to the Court's Order of July 11, 2012.

Educational History and Employment Summary

2. Prior to 1992, I served as a mid-level officer in the People's Liberation Army holding the rank of Vice Regimental Commander. In July 1983, while still serving in the army, I received a three year college degree in Chinese Literature from The Open University of China (formerly the China Central Radio and TV University).

3. In 1992, I retired from the army service and reported to China's Ministry of Foreign Trade and Economic Cooperation ("MOFTEC" or the "Ministry") for a position with the Government. On May 1, 1992, the Ministry assigned me to work for the Chamber and appointed me as the Vice Director of the Chamber's Second Coordination Department. In 1993, following the retirement of the Director of the Second Coordination Department, I became the highest level officer at the Chamber responsible for industry coordination of pharmaceutical products and medical equipment. The Second Coordination Department changed its named to Western Medicine Department in 1995. In 2004, the Department changed its name to Industry Coordination Department and administered and coordinated export regulation of pharmaceutical products (including vitamin C) and a few traditional Chinese medicines. In 2006, the Department was no longer responsible for administering export regulation of Chinese traditional medicines and changed its name back to Western Medicine Department.

4. In 1998, I was designated by the Ministry and appointed by the Chamber as Director of the Chamber's Western Medicine Department. In that capacity, I was

responsible for supervising and administering the industry coordination of pharmaceutical exports, including vitamin C. Until my retirement I was the highest level official at the Chamber responsible for administering export regulation of vitamin C as well as other pharmaceutical products. I reported to the Chairman of the Chamber, who was appointed by the Ministry and who in turn reported to the Ministry.

The Chamber's Creation and Mission

5. The Chamber was established in May 1989 by the Chinese government as part of an effort to reform its foreign trade regime. Prior to that time, China's export trading was controlled by a few designated state-owned import and export trading companies in accordance with mandatory State trading plans designed to achieve economic objectives set by the central government.

6. In the 1980's, China decided to open foreign trading rights to all categories of companies greatly increasing the number of companies engaged in foreign trade transactions, and companies began to engage in aggressive forms of competition with each other without appreciation of the adverse consequences of their conduct on both industries and China's economy. Frequently, the Chinese companies raced to expand their production capacity, competed with each other in relatively small markets for greater market share and more customers by cutting prices, regardless of the industry interest. Perceiving that this would endanger Chinese domestic industries' overall profitability and sustainable growth, the Chinese government as part of the foreign trade

reform created various chambers to oversee and regulate its industries' export activities so that they would act in unison when competing with foreign companies. The Government transferred some former government officials to the chambers' staffs and vested the chambers with regulatory authority.

7. A number of MOFTEC regulations formalized this structure and re-enforced the Chinese government's direct control and supervision of our activities on its behalf. Thus, for example, a 1991 MOFTEC regulation declared that MOFTEC was in charge of regulating the operations of the foreign trade and economic chambers (Art. 2), directed that chambers established with government regulatory functions had to implement MOFTEC's rules (Art. 14), and ordered that all foreign trade and social organizations had to accept the daily supervision and inspection of MOFTEC (Art. 19). This regulation, entitled "Measures for Administration over Foreign Trade and Economic Social Organizations" (February 6, 1991), is attached as Exhibit 1. It was in place throughout my period of employment and governed my activities. As such, I am personally familiar with its provisions.

8. A 1994 MOFTEC regulation directed that chamber staff be drawn primarily from the chamber's members and government authorities (Art. III-8), but top management was to be "recommended" by MOFTEC (Art. IV-13). MOFTEC's "recommendations" were in effect the same as directives since the Ministry would designate only one person who was invariably "approved." This regulation further mandated that chamber employee compensation and salary be implemented under state regulations under

the control and supervision of MOFTEC's Personnel Department, which was to verify and approve the total salary of the Chamber (Art. V-16, 17). A copy of this regulation, entitled "Notice of Ministry of Foreign Trade and Economic Cooperation regarding Printing and Distribution of Several Regulations for Personnel Management of Chambers of Commerce for Importers and Exporters," dated September 23, 1994, Wai Jing Mao Ren Fa No. 540, is attached as Exhibit 2. It, too, was in place when I joined the Chamber, was in effect throughout my period of employment governing my activities while I was at the Chamber, and I am personally familiar with its provisions.

9. The Chairman and Vice Chairman of the Chamber, to whom I reported, were appointed by MOFTEC. We were all dependent upon MOFTEC for the approval of our salary and compensation, and we all directly reported to, and received instruction from the Ministry on a regular basis. Effectively, the top management of the Chamber served at the Ministry's pleasure and were subject to dismissal if it was dissatisfied with our performance. The Ministry was the highest level of Chinese government administrative authority for foreign trade.

10. While I have a general awareness that many chambers were supervising many products on behalf of the Chinese Government under this general framework, my specific personal knowledge of regulation is mainly confined to regulation by the China Chamber of Commerce of Medicines and Health Products Importers & Exporters, and the matters set forth in this affidavit are based on my personal knowledge of that Chamber's regulation of vitamin C.

11. Over the period of time while I was at the Chamber, the State Council and MOFTEC promulgated a variety of regulations under which we were delegated authority to regulate the foreign trade of our members in order to achieve the Chinese government's economic goals. In addition to the written directives and regulations I will discuss below, my Chamber colleagues and I also received from Ministry officials on a regular basis oral instructions and directives on specific issues and matters.

Establishment of Vitamin C Regulation and Vitamin C Sub-Committee's Formation

12. Since at least the 1990's, China's vitamin C industry (as an industry of great importance to China's national economy) has been under direct regulation and coordination, mandated by the Chinese government, with authority for such regulation directly vested with the Chamber pursuant to governmental regulation.

13. In 1992, when I joined the Chamber, vitamin C was as one of 38 products designated as subject to export quota administration because of its important position in China's export, with administrative responsibility assigned to MOFTEC and its local subordinate regulatory agencies. See MOFTEC, Interim Regulation of Export Goods, Order. No. 4, December 29, 1992, attached as Exhibit 3. Under section 4 of that regulation, with which I was personally familiar, such exports were "uniformly regulated and coordinated by the respective Import and Export Chambers of Commerce." Companies engaged in the producing and selling of these products were required to join the relevant Chambers, and the Chambers were required to adopt "specific coordination and regulation methods," which were to be "strictly implemented after discussion and approval by the member meeting."

Pursuant to this general delegation of authority, the Chamber regulated and coordinated the efforts of the Chinese vitamin C industry and I directly participated in this regulation.

14. In 1996, the Ministry issued a regulation, providing that export enterprises could not export at lower than "normal prices," defined as cost plus a reasonable profit. This regulation provided that exporters had to follow the coordination of the chambers, and as such directly governed the performance of my duties. It further declared that failure to comply would be subject to strict penalties including fines or loss of the right to export. A copy of this regulation, entitled "Interim Regulations of the Ministry of Foreign Trade and Economic Cooperation on Punishment for Conduct of Exporting at Lower-than-Normal Price" (March 20, 1996), is attached as Exhibit 4.

15. In 1996, the Ministry issued a report to the Chinese State Council, distributed to the Chamber and received by me in the regular course of my business. That report was partly based on a report of mine to the Ministry about the issues in the vitamin C industry, which I drafted and submitted during the regular course of business at the Chamber. The Ministry reported to the State Council its dissatisfaction with the activities of Chinese vitamin C companies in export and the dangers that low prices posed to Chinese national economic interests. See Wu Yi, MOFTEC's Report to State Council Concerning Current Vitamin C Export Issues and Suggestions for Solutions, [1996] Waijingmao Guanfa No. 185, p.3, attached as Exhibit 5.

16. In 1997, Vice Premier Li Lanqing directed MOFTEC to address the issues identified in the 1996

MOFTEC report through further regulation and the creation of a Chamber Sub-Committee to coordinate vitamin C exports. Soon thereafter a number of regulations were promulgated by the Ministry to further tighten the direct authority, control and coordination of chambers generally pursuant to their government-delegated authority, and to improve the authority and coordination of the China Chamber of Commerce of Medicines and Health Products Importers & Exports in respect of vitamin C in particular. These regulations were sent to me in the regular course of the Chamber's business to follow and implement.

17. Specifically, in 1997, the Ministry and the State Drug Administration, acting jointly, then promulgated a regulation "related to strengthening the Chamber's administration of vitamin C production and export." As the officer administering vitamin C industry regulations, I participated in the Ministry's drafting of this regulation. This measure, which governed my daily activities, included mandates to strictly control vitamin C production scale. It imposed qualification requirements for conducting vitamin C exports, limiting vitamin C exporting rights to 30 companies. The regulation also specified the standard for allocating export quotas, and required the Chamber to strengthen the coordination of vitamin C exports. See MOFTEC & State Drug Administration, Notice Relating to Strengthening the Administration of Vitamin C Production and Export, (1997) MOFTEC Guan Fa No. 664 (November 27, 1997), attached as Exhibit 6. This regulation, with which I am personally familiar, was in effect in November and December of 2001.

18. Article 6 of this Ministry regulation directed the Chamber to establish a "Vitamin C Export Coordination Group," which we would refer to as the Vitamin C Sub-Committee., for the purpose of conducting the industry coordination of vitamin C exports. The Chamber was directed to formulate specific coordination methods and report these back to the Ministry. Under Article 7, the vitamin C manufacturers were required to strictly implement industry coordination measures under the Chamber's supervision, with penalties imposed for any attempts at circumvention. Under Article 8, the government agencies responsible for issuing export licenses were required to strictly review export contracts and issue export licenses only in accordance with the government mandated volume and price as coordinated and set by the Chamber. Companies who failed to comply with the industry coordination were subject to sanctions, including export quota reduction or even revocation of exporting right. (See Article 10).

19. As noted above, I became Secretary General of the Chamber's Vitamin C Sub- Committee, and as such I had direct responsibility to administer these directives and mandates from the Ministry. Early on, even before formal promulgation of the 1997 regulation, I was informed by the Ministry of the new Sub-Committee it would require the Chamber to create. I was the person at the Chamber who was in charge of that Sub-Committee's formation and I prepared and submitted a request to the Ministry to formally establish the Sub-Committee as per the Ministry's directive. In March 1998, the Ministry formally approved that request, and that approval document was delivered to me. "Approval for Establishing VC Sub-Committee of China Chamber of Commerce of Medicines & Health Products Importers & Exporters"

(March 23, 1998) (the "1998 Approval Directive"), attached as Exhibit 7.

20. Under this Ministry directive the Sub-Committee became a branch of the Chamber and subject to the Chamber's leadership and administration. Its personnel were drawn from the Chamber and its members were vitamin C exporting companies who were members of the Chamber. The Sub-Committee's major responsibility and regulatory function, also set out in the Ministry's approval, was to coordinate the vitamin C export market, price and customers of China. Its stated mission was both to improve the competitiveness of the Chinese vitamin C industry in the global market and to promote the healthy development of China's vitamin C export through industry coordination.

21. The 1998 Approval Directive remained in effect throughout my employment at the Chamber and was never revoked. As such, throughout this period the Sub-Committee remained responsible for coordinating vitamin C exports as directed by the Ministry. Although the designated mechanisms of regulation given to the Sub-Committee by the Ministry as tools to discharge this delegated responsibility were to change and evolve in response to China's assumption of membership in the global market, the Chamber's Government-delegated responsibility to coordinate vitamin C exports through the Sub-Committee never changed and there were always mechanisms through which we could effect that control.

22. In 1997, with guidance of the Ministry, I drafted a Charter to govern the activities of the Sub-Committee. The document which resulted, the Charter of Vitamin C Sub-Committee of China Chamber of Commerce of Medicines and Health Products Importers

& Exporters, (October 11, 1997), (the "1997 Charter"), attached as Exhibit 8, was designed by me to set forth the plenary authority of the Chamber over its members, and the requirement that they participate in the Sub-Committee's activities and follow the directives of the Chamber. The Charter was one of the documents submitted to the Ministry for request for approval of the establishment of the Sub-Committee.

23. The 1997 Charter, which was in effect in November and December 2001 and governed the Sub-Committee's functions at that time, states:

- "The Sub-Committee has the following tenets: implementing and executing the state policies and regulations on foreign trade; maintaining orderly export of vitamin C products; ... and serving for an orderly and highly efficient development of vitamin C foreign trade on the basis of unified coordination." *Id.*, Art. 3.
- "The Sub-Committee performs coordination, direction ... and supervision & inspection functions over its members." *Id.*, Art. 5.
- "Only the members of the Sub-Committee have the right to export vitamin C and are simultaneously qualified to have vitamin C export quota." *Id.*, Art. 12.
- Members were required to "comply with various directives, policies and regulations with respect to foreign trade, comply with the Charter and regulations of Vitamin C Sub-Committee and implement Sub-Committee's resolution" and

"strictly execute export coordinated price *set by the Chamber...*" *Id.*, Art. 15.

- "Any violation of the Charter of the Sub-Committee, failure to implement any resolution or regulation of the Sub-Committee and failure to perform any member's obligation shall be punished by the Sub-Committee by means of, according to gravity of circumstances, warning, open criticism and even revocation of its membership. The Sub-Committee will suggest to the competent government department, through the Chamber, to suspend and even cancel the vitamin C export right of such violating member." *Id.*, Art. 16.

24. Pursuant to the mandate of the 1997 Charter, all four Chinese vitamin C manufacturers – Northeast Pharmaceutical Group Co., Ltd. ("NEPG"), Hebei Welcome Pharmaceutical Co., Ltd. ("Hebei"), Weisheng Pharmaceutical Co. Ltd. ("Weisheng") and Jiangsu Jiangshan Pharmaceutical Co., Ltd. ("Jiangsu") – became Sub-Committee members, and all four of these companies remained Sub-Committee members throughout the period of time of my employment at the Chamber and participated in the Sub-Committee meetings that I called. None of the other companies named as defendants in this case (China Pharmaceutical Group Ltd., Shijiazhuang Pharmaceutical (USA) Inc., North China Pharmaceutical Group Corporation, North China Pharmaceutical Co., Ltd. and North China Pharmaceutical Group Import & Export Trade Co., Ltd.) ever participated in any of the Government-mandated industry coordination meetings conducted under the Chamber's supervision and direction.

Operation of the Sub-Committee

25. As part of my responsibilities at the Chamber, and under the authority delegated by the Ministry, I served as the Secretary General of the Sub-Committee throughout my tenure at the Chamber. I also served as the Vice President from 1998 through 2001 and President since 2002. (Prior to 2002, a Vice Chairman of the Chamber served as the President.) As the authorized representative of the Chamber, I was required to administer industry coordination based on market changes. I organized and presided over meetings with Chinese vitamin C manufacturers, sometimes calling them myself and on other occasions directing that a member call and organize them. I caused notices to be sent to Sub-Committee members of scheduled meetings (usually at the Chamber's offices), identified export issues to be addressed by industry coordination, and required members to discuss and to agree upon appropriate solutions at these meetings.

26. Whether or not the members of the Sub-Committee agreed with the Chamber's agendas, they were all required to participate in this process and to reach agreement on industry coordination measures. These measures included developing export quota amounts for MOFTEC approval and insertion in its annual export plan which all exporters were required to follow, and the periodic setting of minimum prices which all exporters were required to charge. I regularly reported the Sub-Committee's administration of industry coordination to the Ministry for its approval and review and oversaw the Chamber's efforts at monitoring compliance.

27. This overall process of mandated meetings, discussion and coordination was conducted in accordance with an overall policy directive of the Chinese Government; and we regularly reminded the Chinese vitamin C industry of this requirement on many occasions. For example, the Chairman of the Chamber at a December 4, 2000 Sub-Committee meeting which I chaired stated to the exporting manufacturers that they needed to be united together and to act in unison to face foreign parties.

28. In a meeting held by the Chamber on April 13, 2001, a MOFTEC officer in my presence reminded the vitamin C manufacturers that their product had been strictly regulated since 1997, and reminded them of the importance of the Chamber in this process. The officer further told them that the Sub-Committee was required to act proactively and that the industry had to obey this coordination and the industry rules. A few days later, I issued a notice again telling all manufacturers of their responsibility to adhere to the price set by the Chamber and that non-qualifying exports would result in the cancellation of quotas.

29. On many occasions we were told by MOFTEC, and we reminded the vitamin C producers, of the importance of exercising self discipline. Basically this meant that members of an industry are required to act in ways consistent with the economic interests of the State, and are required to discipline their activities so as to achieve the economic objectives directed by the Government. The Chamber, and the Vitamin C Sub-Committee which I chaired, were the Chinese government-delegated organizations responsible for coordinating and achieving this self-discipline.

30. As employees beholden to the Government for our position and approval of salaries, and reporting to the Ministry, we at the Chamber were responsible to direct and regulate our members and MOFTEC delegated us the authority to do so. As industries with significant government ownership, with their management from the Communist Party and government agencies, our members were expected and required to attend our meetings, and to follow our direction.

November and December 2001 Chamber Meetings

31. In late 2001 the Chamber called and I presided over Vitamin C Sub-Committee coordination meetings held under the Ministry's direct order to address potential foreign antidumping investigations. These meetings were prompted by warnings from the Chinese Embassies in Brussels and Berlin about a threatened antidumping investigation against Chinese vitamin C exports, and directions by the Ministry to us at the Chamber to call a Sub-Committee meeting and develop a coordinated plan to address the situation.

32. Specifically, it was part of our normal business to receive communications and instructions from the Ministry regarding economic policy. In September 2001, the Ministry sent to the Chamber a Chinese embassy report from Brussels warning of a possible dumping suit. A copy of this report, which I received in the normal course of business, is attached as Exhibit 9.

33. Then, in early November, the Ministry sent a situation report from China's embassy in Berlin to the Chamber's liaison officer, with the written directive that we convene a meeting of the Chinese Vitamin C producers

to address the situation.[1] This report and that directive were given to me by the Chamber's liaison officer in the normal course of our business. A copy is attached as Exhibit 10. Following that directive, I convened a meeting of the vitamin C manufacturers.

34. This meeting, over which I presided as Secretary General of the Sub-Committee, was held at the Chamber's offices on November 16, 2001. In attendance were the representatives of the four vitamin C manufacturers: NEPG, Hebei, Weisheng and Jiangsu. Also in attendance were the President of the Chamber, the Vice Chairman of the Chamber and the Liaison Director of the Chamber.

35. The meeting began with reminders from me and the Chairman of the Chamber of the principles under which the Sub-Committee operated and their obligation to follow the direction of the Chamber. I summarized the threats of anti-dumping proceedings as had been reported to us by MOFTEC, as well as MOFTEC's direction that the Chamber address the situation. I also advised them that industry coordination enforcement regulations were going to change, and that the Chamber would be empowered to review contracts and would refuse to give its approval to any export contract which did not comply with the coordination measures the Chamber would require them to adopt. This is the so-called "Verification & Chop."

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1. There is a handwritten note on this situation report from Xiao Xia, an official of MOFTEC's Fair Trade Bureau, to Vice Liaison Officer Guan stating "Is there a need to convene a meeting to analyze our future export situation?" which was the Ministry's typical way of directing us to take action and convene a meeting.

36. Under my supervision and at my direction there was then extended discussion among the manufacturers to reach agreement to increase the minimum export coordination price to $3/kg from $2.8 and to export only at certain allocated volumes. Because there was some disagreement among the manufacturers as to volumes that could be exported, I told them the volumes they would be required to accept, exercising the power I had under the existing 1997 regulations, the ongoing 1998 Approval Directive, and the verification & chop powers in preparation. At the conclusion of the discussion, and as directed by the Chamber, the attendees by hand-voting, unanimously passed the required resolution, and I so reported to MOFTEC.

37. In December 2001, I held another meeting with the manufacturers regarding the coordination measures agreed to at the November 2001 meeting. I reviewed the contemplated changes to the form of regulation, told them that industry coordination would continue to be required, and that I would not stamp approval on any contracts which did not comply.

Changes in Mechanisms due to WTO

38. China's accession to the World Trade Organization ("WTO") in December 2001 led to changes in the organizational format of the Vitamin C Sub-Committee and the mechanisms utilized by the Chamber in its review and coordination of vitamin C exports. But this did not change the delegation of responsibility of the Sub-Committee members to exercise self-discipline under the direction and auspices of the Chamber as had been formally delegated in 1998 and which remained unchanged. As matter of practical fact and effect it did not

change the fact that the Chinese vitamin C industry had to attend Sub-Committee meetings which the Chamber called, follow our agendas for discussion, and had to reach agreement by consensus at those meetings on self discipline and coordination. The Chamber continued to have power and the duty, delegated by the government, to enforce these agreements.

39. To explain, prior to China's accession to the WTO, Chinese vitamin C exports were subject to a quota licensing system administered by the State where each exporter was required to apply for an export license for each of its export transactions. Only companies identified in the 1997 MOFTEC & Customs Notice were permitted to engage in Vitamin C exporting. By the end of 2001, 21 companies remained in the vitamin C export business, of which four were manufacturers and the remainder were trading companies. To receive a vitamin C export license, an exporter had to observe volume limitations set by the Ministry and minimum price restrictions set through industry coordination mandated, directed and administered by the Sub-Committee. A local or central MOFTEC export licensing office would issue an export license only when the export price and quantity stated in the export contract satisfied the volume and price requirements. The Chinese Government, through its Customs, was directly involved in the administration of vitamin C exports. See 1997 MOFTEC & Customs Notice, discussed above.

40. In March 2002, as part of its accession to the WTO, the 1997 regulation was repealed. List of the Fourth Branch of Departmental Decisions Abolished by the Ministry of Foreign Trade and Economic Cooperation, Order No. 24 (March 21, 2002) item 11, attached as Exhibit

11. In its place, the Ministry instituted a new mechanism "in order to accommodate the new situations since China's entry into the WTO, maintain the order of market competition, [and] promote industry self-discipline." Notice Issued by the Ministry of Foreign Trade and Economic Cooperation and the General Administration of Customs for the Adjustment of the Catalogue of Products Subject to Price Review by Customs, MOFTEC MAO FA [2002] No. 187 (March 29, 2002) (the "2002 Regulation"), attached as Exhibit 12. This regulation directly governed the performance of my duties and as such I am personally familiar with its contents.

41. In this regulation, we were instructed that the new mechanism, known as "verification and chop," would be "conducive for the chambers to coordinate export price and industry self discipline." Specifically, all contracts covering export of vitamin C by anyone, regardless whether or not they were made by a Sub-committee member, would now be administered by the Chamber under authority delegated by the Government and before being submitted to Customs. Instead, the contracts were to be submitted to me and my staff for review to ensure they were consistent with the self discipline agreements reached under our supervision and direction. If we verified that the contracts were consistent with those mandated agreements, we would affix the Chamber's "chop," and the shipment could proceed. The Chinese Customs would not review the contracts, but they would look for our "chop": if our chop was not on the contract, Customs would not accept the application for export and the export would not proceed.

42. Although the Verification & Chop regulation explicitly mentioned only review of price, our mandate to effect general coordination of the vitamin C export business under the 1998 Approval Directive continued. As such, the Chamber decided to use this review tool to review both prices and quantities and for certain periods of time would set export quotas applicable to products manufactured by China's vitamin C producers.

43. In 2003, the Ministry and Customs issued a more detailed regulation. See Announcement of Ministry of Commerce of the People's Republic of China and General Administration of Customs of the People's Republic of China, No. 36, 2003 (November 29, 2003) (the "2003 Regulation"), attached as Exhibit 13. This Announcement expressly detailed that all vitamin C exporters were to submit their contracts to the Chamber, and that we would verify them based on the "industry agreements" adopted under our direction. It specifically provided, consistent with the practice that we had already adopted, that the Chamber would not affix its chop to non-conforming contracts.

44. A new Sub-Committee Charter drafted by me was adopted Jun[illegible] 2002, and contained several statements to be consistent with the changes in the vitamin C regulation provisions. However, the new Charter continued the fundamental principle that the Sub- Committee was required to accept "guidance and supervision from the Chamber." (Art. 4). The Sub-Committee's mandate to coordinate the vitamin C market continued under the 1998 Approval Directive; and consistent with that directive, the new Charter directed

that the Sub- Committee "shall coordinate and guide vitamin C import and export business activities, promote self-discipline in the industry, maintain the normal order for vitamin C import and export operations, and protect the interests of the state, the industry and its members." (Art. 8). Members continued to be obliged to accept the coordination of the Sub-Committee (Art. 17).

45. With these acknowledgments, and the power over the verification and chop delegated to us by the Government, the Chamber as a practical matter retained the ability to direct and coordinate agreements, to threaten to withhold its chop unless satisfactory agreements were reached, and retained the power to prohibit exports that were inconsistent with the agreements reached under our supervision. Although the new Charter provided that the Sub- Committee became a "self-disciplinary industry organization jointly established on a voluntary basis" (Art. 3), as a practical matter, no manufacturer could abandon participation in the Sub- Committee or the meetings that the Chamber called.

46. This is because those meetings, under the Chamber's guidance and direction, were to establish the prices and volumes which would meet with our approval and chop. Anyone not participating in those meetings was still subject to verification and chop monitoring to ensure compliance with the Chamber's coordination decisions. ("For V&C applications made by non- member exporters, the Chambers shall give them the same treatment as to member exporters." 2003 Regulation, Exhibit 2, item F.) Those trading companies which did not join the Sub-Committee nevertheless had their export volumes charged

against the export quotas of the manufacturer who sold them the product, and their contracts were nevertheless subject to our price review. As such, the trading companies' export sales remained under the control of the Chamber.

47. My colleagues and I at the Chamber continued to be employed and compensated under MOFTEC's supervision, and were now delegated new "verification and approval" powers which kept us a position where we could compel all exporters to comply with industry coordination directions resulting from the self discipline mandated by the government. Exports of vitamin C, while no longer under the direct administration of the Chinese Government, continued to be subject to self-discipline under the direction and coordination of the Chamber, subject to the verification and chop enforcement powers delegated to us by the Chinese government. We continued the regulation of vitamin C exports, which remained subject to the verification and chop system.

48. I am aware that the Ministry and Chinese Customs' 2002 verification and chop regulation contains a provision, which provides: "[g]iven the drastically changing international market, the customs and chambers may suspend export price review for certain products with the approvals of the general members' meetings of the sub-chamber (coordination group) and filing with [Customs and MOFTEC]." However, this provision did not give the Sub-Committee the unilateral power to suspend the verification and chop system because as clearly stated in the Sub- Committee's Charter, the Sub-Committee was supervised and guided by the Chamber. See Sub-Committee's 2002 Charter Article 5. The manufacturers

did not have the authority to discard the verification and chop system and during my tenure as the Secretary General of the Sub- Committee, there was never any discussion about even the possibility of discarding the verification and chop system with respect to vitamin C exports. Hypothetically, if any manufacturer had ever proposed abolishing the verification and chop system concerning vitamin C exports, I would report such proposal to the Ministry as part of my responsibilities and it would be a matter for the Ministry's review and determination. The manufacturers had no authority to effectuate such a proposal on their own. Indeed in the 2003 regulation the verification & chop regulation was forcefully re-promulgated by the Ministry.

49. The verification and chop system provided the Chamber with an effective tool to enforce industry self discipline and coordination, and the Chamber on a website page added in mid-2002 so publicly reported, stating "Beginning on May 1, 2002, vitamin C was listed as a product requiring price reviews by China Customs and a seal of pre-approval by the China Chamber of Commerce, which has provided powerful oversight and safeguards for the implementation of self-discipline agreements among domestic manufacturers." The webpage, added several months after the November-December 2001 meetings, also contained statements reflecting the Chamber's sensitivity to China's new WTO obligations, but clearly described the work of the Chamber's vitamin C Sub-Committee and the verification & chop mechanism.

50. Under verification and chop, as before, China's vitamin C manufacturers did not have the option of ignoring or not participating in the self-discipline process itself or the duty to coordinate which it entailed, nor

could anyone familiar with the Chinese Government's self- discipline policy, the organization of the Chamber or the delegation of verification and chop authority within that policy, reasonably draw any such conclusion. The Government's Ministries themselves did not determine specific prices or quantities, and the Government itself did not intervene in those discussions. But the Government created the Chamber, designated its officials, delegated us powers, and reviewed our actions and required the Chamber to coordinate. Industry members, subject to the ongoing self discipline mandate and the verification & chop oversight tool given to us by the government, had to attend the meetings that were called, and they had to discuss and reach agreement at those meetings under our supervision.

51. The Chamber was never relieved by the Government of its coordination responsibilities, the Sub-Committee's authorizing mandate continued in effect, and we continued our process of mandatory coordination as before. Throughout my entire tenure at the Chamber, I have warned the manufacturers, on numerous occasions, that I would exercise the Chamber's powers not to provide the chop on their export contracts unless they were compliant, and on several occasions I did exercise these powers.

52. The meeting held in late 2001 in response to threatened dumping action, which I have described above, was one such example.

53. During mid-2002 through early 2003, each of the manufacturers on occasion presented contracts which would exceed their quota. In such circumstances my staff denied them a chop and forced them to wait until the following month.

54. In late 2003, after a period of significant price decline subsequent to the SARS epidemic where the vitamin C export price sharply dropped from an average of $9.20 in the summer of 2003 to around $4 in three months, I called several meetings and ultimately at my direction the manufacturers agreed to limit production during the first half of 2004.

55. In 2004, I told the companies that a mechanism had to be found to limit exports and thereafter I directed that they implement a proposal to create and stock a warehouse in Shanghai.

56. Subsequently, to compel Weisheng to comply with the coordinated shutdown schedule, I delayed stamping on its export contracts with the Chamber's chop.

57. In December 2005, I presided over a Subcommittee meeting where I required vitamin C manufacturers to implement the industry coordination measures of suspending production in April and May of 2006. To ensure the implementation of the measures, I warned manufacturers that if any company quoted a lower price than the minimum export price or did not stop production as mandated, the Chamber would not issue export verification approvals to that company until it became compliant.

58. In June of 2006, while the Chamber acceded to requests from NEPG to postpone its production suspension until July, I made a telephone call to Du Chengxiang of NEPG to force NEPG to avoid further delay. I reminded Mr. Du of NEPG's obligation to follow industry coordination and told him that if there was

any continued delay the Chamber would impose a series of sanctions on NEPG, including denying verification approval.

59. This is not to say that the administration of mandated coordination and self- discipline was perfect. The Chamber could not force self discipline in ways contrary to market realities or the basic laws of supply and demand. At some meetings agreement was possible, while at others as matter of overriding economics it was not. Often these matters required extended discussion and I listened to and considered points made by the industry before formulating decisions. In some circumstances, the Chamber later had to consider modifying the coordination measures to address the market conditions with more practical measures in light of economic circumstances.

60. While I enforced the coordination measures within the bounds of the Chamber's authority, as with any other regulatory measures there was no guarantee that circumvention would not be attempted. While all contracts were inspected before affixing our chop and we refused to affix our chop to non-conforming contracts, our ability to investigate whether the export price was compliant beyond the face of the contracts was limited.

61. In addition, the Chamber had no control over pricing once the product left China. In a falling market, buyers and brokers were able to obtain post chop price concessions and rebates which were beyond the ability of the Chamber to stop. Sometimes this came to our attention via requests from China's Foreign Exchange Authority to give a statement to it so that proceeds collections in

foreign currency which were less than contract prices could be remitted. There were occasions where we refused to give such a statement, such as in mid-2003, and this in turn presented exporters with payment delays and risks of penalties under exchange procedures; but customers and brokers continued to exert their power to exact price concessions from Chinese manufacturers.

62. Also, there were several instances of basic changes in market dynamics, such as the withdrawal of vitamin C producers in other countries, the SARS outbreak in late 2002 through the middle of 2003, and a second epidemic in late 2003-2004, where prices rose significantly on their own.

63. By way of example regarding the imperfections in our administration and the need to respond to basic economic situations, at the November and December 2001 meetings discussed above, the manufacturers under our mandate reached self-discipline agreements on minimum export prices and export volume as the Chamber required. At that time, these agreements had been expected to be implemented in early 2002, but the government did not actually promulgate the 2002 verification and chop regulation until May. At that time, I received a report from the Customs showing that there had been an excess of more than 1,000 tons in the vitamin C export since January 1, 2002. Because the market demand and supply were out of balance, the companies were unable to implement the agreement and they seized opportunities to make more sales when they could. I devoted significant time and effort to investigate and determined who made the excessive export, criticized them in a Subcommittee meeting, and deducted from the excessive amount from their remaining annual export allocation.

64. As another example, during the first SARS epidemic in late 2002-early 2003, vitamin C prices rose significantly. However, as the vitamin C price increased, almost all Chinese manufacturers expanded their production capacity. While the Chamber was authorized to make recommendations to other Government agencies on new capacity additions by Chinese manufacturers, this was something the Chamber was given no authority to regulate. Consequently, in mid-2003, as the SARS outbreak subsided, there was excessive supply of vitamin C in the market and prices started falling.

65. At this point the Chinese manufacturers started a "price war" by making great price cuts in order to secure more export sales, and it was anticipated that the price would fall continuously in the second half of the year. In June 2003, I held a meeting with manufacturers and required manufacturers to develop industry coordination measures to stop the price war. As I required, the manufacturers discussed market conditions and agreed to set a floor price of $9.20. However, that measure was simply unrealistic in light of the market conditions. As a result, in July 2003, I held another meeting with manufacturers and during that meeting the $9.20 price was cancelled.

66. As the price continued to fall, I continued to invoke the self-discipline mechanism to search for a solution. I called for and held another meeting in September 2003 to discuss industry coordination measures. At my direction, manufacturers discussed potential measures including export volume and price restrictions, but neither appeared practical in view of economic circumstances and no solution

was found at that meeting. Finally, as I discussed above, in December 2003, I held another meeting again to address the industry coordination measure and the manufacturers agreed, at my direction, to suspend production in the first half of 2004. The other manufacturers subsequently complained that Weisheng failed to suspend production; but, as noted above, I was ultimately able to compel Weisheng to resume compliance.

67. Sometimes self discipline was effective and sometimes it was not. However, whether the industry coordination measures adopted under our mandate were effective or not, the Chinese vitamin C manufacturers were required at all times to participate in industry coordination discussions, following the agenda the Chamber set. There may have been circumstances where economic conditions negated the agreements we directed be made, but that does not mean they had a choice not to participate in the industry coordination process, or a choice not to reach agreements under my direction as dictated by economic conditions.

68. I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

In witness whereof, I have executed this declaration on this 5 day of August 2012.

/s/

Qiao Haili

SELECTED EXHIBITS FROM TRIAL HELD IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

SELECTED PLAINTIFFS' TRIAL EXHIBITS

Q3 2004 WORK SUMMARY FOR INT'L BUSINESS DEPARTMENT, DATED OCT. 1, 2004

In Q3 of 2004, with the guidance of the leadership of the Company, under the circumstances of significant changes to the international VC market and to the Company's internal conditions like production etc, the Int'l Business Dept. made correct judgments on market situations, acted properly according to the changes. We transformed pressures into motivations, strengthened the management of the department, and aggressively competed in the int'l market. We also adjusted our strategies in marketing and sales, and continued to develop our mission, strategies and organizational structure. Now, we summarize our work in Q3 as follows:

I. Completion of major business targets:

Project/Targets		Targets for Jan. to Sept.	Actual completion of Jan.-Sept.	Actual/Target Ratio (%)
Sales Volume (Ton)		8414	8117.12	96.47
Sales revenue (¥10,000)		32855	32491	98.89
Received payment (¥10,000)		32855	33231.58	101.15
Payment receipt ratio (%)		100	---	101.15
Sales of Major Products	VC	7294	6663.75	91.36
	VC-Na	677	773.075	114.19
	VC-CA	140	102.475	73.20
	VC granules	568	577.82	101.73

Notes: (1) The sales volumes did not include gulonic acid (80tons/month), which was 800 tons total from Jan. to Sept.;

(2) The factor that prevented VC sales from meeting the 100% target was the actual lower production output, therefore, as a result of this, by the end of Sept, the accumulated export volume was 300 tons less than the targeted volume.

II. In order to smoothly meet the targets given by the Company's guidelines, our department focused our work in the following aspects:

(I) Internal management

1. Improved our business flow process and enhanced the management on basics. From sales ideas to the quality of the work force and to team work, we were striving for an overall lift, so that we could better manage our business and improve our customer services.

2. Segmented the market into 3 business territories in a reasonable manner based on our years of experience in foreign trade, and further refined the segmentation: among the 3 territories, each had its specific purpose but still contained some reasonably crossed sections, making it favorable to streamline management and increase sales. The segmentation also avoided overlap in customer management, effectively eliminating multi-quotes of our products in a specific region.

3. Enhanced the system of incentives, rewards and punishments: as the new production line boosted our output, we added more incentives to encourage sales employees to explore new business growth besides the completion of their assigned sales volume. We increased the evaluation weight of some components in performance-oriented awards, and are considering setting up awards into single assessment items, for example, to give fat bonuses to those who bring in new key customers, or break into regional markets that have fairly good potentials, or make outstanding contributions to the sales volume or the profit. All these measures were to aggressively motivate business personnel.

4. Improved the coordination with other departments in the Company

Actively coordinated with closely-related departments such as production, quality control and workshops within the Company; through mutual support and collaboration, timely solved complaints and issues raised by customers, and, conveyed an overall positive image to the customers through the process of communicating and serving them.

(II) Paid attention to market status analysis and improved coordination in the industry

1. Carefully analyzed the government's macro policies and international VC market situations, including the anti-dumping movements. We stepped up studies on rivals, fully thought over the various factors that might affect the VC export sales and got mentally prepared accordingly, proposed and gradually implemented corresponding reasonable measures in a planned way.

2. As to the current development of VC market, it is still unclear on the outcomes of the negotiation between BASF and NEPG and the cooperation between DSM and NCPC. We are going to closely watch them. At the same time, we studied operations, the cost situation, and strategies on product sales of domestic VC producers to help us make decisions. According to our analysis of the VC export market in the 1st half of the year and the market forecast for the 2nd half of the year, and our analysis of the export data of each producer compiled by the Customs, with the supplementary help by the "outer brain" - the information consulting company, we produced the VC market overall study report and submitted it to the Company leadership for its review and understanding.

3. Fully exerted our Company's function as the rotating Chairman of the VC Chapter of CCCMHPIE, proactively organized and participated in the coordination meetings of the VC Chapter of CCCMHPIE. We organized the large producers to coordinate and adjust industry strategies, enhanced our work in regards to the strengthening of the self-regulation in the industry, the stabilization of the market price and the guiding of the market to develop in a normal way. In the aspects of organizing meetings and implementing the resolutions of meetings, we also inputted a lot of our energy.

(III) Through "Go-out-to-visit and welcome visitors," increased exchanges with customers and built up the customer pool

1. In July, we attended the IFT meeting and expo in the US. This is a highly professional event, held once in a year in big cities across the States. It gathered almost all food-related industries in the States, with an influx of exhibitors and visitors in the production and distribution fields. Most of them were from the US, and quite a number of them were from Latin America. The others were from Europe and Asia. We received many of our old customers and a lot of new customers at our booth. This had a very significant meaning to us in developing the markets in North America, Latin America and Southeast Asia. After the event, we visited out key customers on the US west coast, learning the local market situation and future development possibilities.

2. In September, we visited our key customers in Europe. According to our customers' reaction to market changes after the vacation season and our timely tracking

of market changes, as well as communication exchanges that we had with our long time customers in the traditional markets, we had a better in-depth understanding of local market conditions and their sales channels. We also investigated the conditions as to setting up a warehouse in Hamburg, and promoted the warehouse to customers, expressing that the warehouse would provide excellent customer services and spot delivery of goods. Customers were pretty interested in it. During our European visit, we also visited some new customers. This ensured us solidifying the traditional market, expanding our customer base and developing new market share.

3. In August, we participated in the Indonesian pharmaceutical meeting organized by CSPC and visited local key customers afterwards, to exchange information on market demand and the market situation, and to further learn about market demand and user distribution. Visiting Indonesia and meeting with new customers were successful attempts for our Company in the effort of exploring the Southeast Asia market, and was very beneficial to us in further seeking and developing new cooperative channels and emerging markets.

4. In August, after overseas customers ended their summer vacations, we had a lot of customers visit us. During this period of time, we continuously received key existing customers from Japan, Europe and the US and new customers that we had not yet started business with. We also had a quality audit on the new production line by customers. In addition, we had complete market information changes with them. The customers were very interested in our new production line, particularly in the fact that our Company became the largest VC producer.

This piece of news was very encouraging in strengthening the current cooperation between the customers and Weisheng and boosted the chance of potential cooperation with new customers. The customers stated that they would increase or begin their cooperation with us

"Go-out-to-visit and welcome visitors" will continue to play an important role in carrying out our sales work in Q4 and even sales work for next year and for generating new customers.

5. Improved the quality of the customer structure and expanded clientele pool

(1) Customer's creditworthiness: conducted credit investigations on the credit reputation of our major customers and our rival's key distributors; built on this credit analysis, we focused on the optimization of customers, traders and distributors to ensure the continuation of business with creditworthy customers, and sought new growth opportunities according to the facts found, ultimately keeping business on a healthy development track.

(2) Re-optimized clientele: maintained and expanded the current key customer base and the established markets; at the same time, reached out to competitors' distributors, aiming at setting up business relationships, for instance, stepped up communications with Great Earth, AMC etc. in order to grab major customers from our rivals without interrupting our current distribution channels.

(3) Increased our business share with end-users: kept in close contact with Pepsi-Cola, Seven-Up and

large granule uses like Leiner and Amway to expand our business volumes with them.

(4) Set up and ran the Hamburg warehouse in a reliable way, and planned to set up another warehouse in the US to ultimately realize the goal of spot transactions, reducing market risks and placing us in a competitive advantage when the market is very fluid.

(IV) Enhanced the payment collection of sold goods to avoid payment risks.

1) When signing contracts, payment credit periods were strictly limited in order to minimize risks; constantly tracked a customer's operations, cash flow status and timely adjusted the payment terms and line of credit; and promptly sent out warnings on over dues.

2) Conducted analyses twice on A/Rs each month and urged sales persons to press for payments; utilized the performance assessment system by tying the performance evaluation with the receipt of payments and/or full payments, thereby intensifying the full payment awareness of sales persons.

3) Increased the work of collecting payments: using legal methods, with innovative ways such as sending people to Kunshan Foreign Trade Co. to collect overdue payments, we were able to make great progress in this regard, as such, we completed the planned first 3 stages of payment collection and brought in a total of ¥4.15 million of over dues. We anticipated that by the end of the year, the balance of ¥1.3 million over dues would be received, thereby completely solving the problem of bad debts.

(V) Continuation of team building and upgrading of work force

1) Intensified studies on politics to understand the government and industry's guiding principles and policies; vigorously participated in training organized by the Company and enhanced teamwork mentality; instilled a sense of crisis in employees to boost the awareness of developing new business.

2) Meanwhile, boldly thought out of the box, by creating innovative management, and pursued a systematic and scientific management method. Through training in foreign trade negotiations to all department employees, we improved the marketing sales skills and price negotiation techniques which uplift the overall quality of the department; we also trained our employees in etiquette in the business environment to pave the way for international marketing and sales.

III. Existing problems:

1. The market is not optimistic. At present, the VC market is still complicated and unclear. The outlook is not very sanguine.

Right now, it is not clear what kind of cooperation will take place between NEPG and BASF. NEPG's current customers are looking ahead or currently selecting new partners. The same is true to the cooperation between DSM and NCPC. Although the maintenance and repairs by Welcome and the internal fitting will slightly decrease the overall production output, which offers a little buffer to blunt the price slippage, nevertheless, the long term prospects of the market are too difficult to determine.

Shangdong Hualong has reached a capacity of 8,000 tons a year. We must keep a close eye on them. Now, each large producer is on high alert and is preparing future sales battles in every aspect, ranging from product structure, production adjustment, market development to sales mechanisms. We should not let our guard down, rather, we should prepare for a hard fight down the road.

2. We must improve our management and upgrade our business knowledge.

Our priority is to enhance our sales force buildup. From deploying personnel, upgrading employee quality to cultivating sales concepts to team work building, we need to improve our overall competency. To professionalize our management team, building up an effective, teamwork-oriented sales force are musts.

V. Work focus for the next quarter:

In Q4, we are going to concentrate on the following tasks:

1. Focus on the expansion of the market share, proactively develop the international market, enlarge the customer pool; actively pursue the maximum sales volume without compromising the profit ratio: first of all, satisfy the demand of long time customers and customers with long-term contracts, secondly, meet the demand of new or potential customers, trying to gain additional market share.

2. Maintain the prevailing policies to traditional European, US and Japanese markets, and continue to develop these markets.

(1) Encourage our sales persons to obtain the local end-user customers' business and sign more long term contracts, so as to prepare ahead for a hard fight next year. After judging the pros and cons, establish cooperative relationship with those local influential distributors who haven't yet had business with us.

(2) Meanwhile, speed up the operation on leasing spaces for setting up warehouses to solve the issue that some customers would not purchase products from us over concern of ocean shipping risks.

(3) On the basis of securing a significant number of long term contracts, expand our market development into emerging markets – Southeast Asia and South America.

3. Do well in marketing and carry out a "market network" program.

(1) Pay attention to information gathering, so as not to fight blindly. Know our enemy and know ourselves, we can fight many battles with no danger of defeat, and emerge as a winner in competing in the international market.

(2) Pave the way for us to enter the pharmaceutical market: focus VC derivatives primarily on the European and Japanese markets; when the situation allows in the future, switch to the US and Australian markets.

(3) When selling VC to the Canadian market, we need to build up the customer pool of VC derivatives, so that we are fully prepared to develop the market for the products to be produced after the new line in the deep processing workshop that will be put in use next year.

In general, for the Q3 work performance, the Int'l Business Dept. benefited greatly from our good judgment

on the market situations, and subsequent preparation work and quick reactions. For our work in Q4 and next year, we will further learn from our experiences and lessons, and continue to execute effective policies and measures. Nevertheless, we need to find out the shortcomings that we had and correct them, to prepare us to fight the upcoming competition in the international market.

International Business Dept.

Oct. 1, 2004

MEMORANDUM OF CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS, "SUGGESTIONS TO ESTABLISH A CREDIBILITY SYSTEM," DATED JULY 17, 2003

CHAMBER OF COMMERCE FOR IMPORT & EXPORT OF MEDICINES & HEALTH PRODUCTS (CCCMHPIE)

Suggestions to Establish a Credibility System

[2003] yi shang zi No.52

Re: Suggestions to establish a credibility system

The Office of the National Taskforce for the Rectification and Regulation of Market Economic Order,

According to the July-14 meeting requirement, CCCMHPIE now reports to you regarding our Chamber of Commerce's work in industry self-regulation and credibility building as follows:

1. Work in industry self-regulation and credibility building

This Chamber of Commerce's work in this regard is divided into two parts. One is in the category of western medicines, which is primarily focused on commodities that are exported in high amounts, or commodities that have surplus production capacity or the production capacity may become excessive, or which supply exceeds demand, or in severe low-priced competition in order to sell, or commodities that may lead to anti-dumping law suits. In this part of the work, the coordination of VC has yielded notable results: through industry self-regulation, prices

of VC exports have increased significantly and thus have recovered economic losses for the country. From Jan. 2002 to May 2003, in comparison to the price of US$2.80/kg at the end of 2001, VC exports brought in additional revenue of more than US$63 million. Another part of the work is in the category of traditional Chinese medicines, which are primarily concentrated on the establishment of standards. CCCMHPIE formulated the "Green Industry Standard for the Import and Export of Medicinal Plants and Preparations." This standard was promulgated by the former MOFTEC in the form of a statute and went into effect on July 1, 2001. The publication of this green industry standard ended the history that our country didn't have a standard for the import and export of traditional Chinese medicinal products. This standard has been recognized by the Singaporean health administration, South Korean Import and Export Association and the British Association of TCM Suppliers.

So far, over 120 lots and products of more than 30 companies have submitted the application for standard compliance.

2. Thoughts on the work of industry self-regulation and credibility building

Medicines and health products are special products. In order to safeguard medication safety and efficacy on human beings, it is necessary to have certain standards to govern companies engaged in medicines and health products. At present, in the production side, the "Pharmaceutical Administrative Law of PRC," only governs drug producers that sell domestically. There

are no stringent requirements on drug producers that solely export. In the foreign trade side, medicines and health products are treated as regular commodities and any import and export company can engage in the trade of medicines and health products. Therefore, in reality, there are many illegal or sub-standard drug producers that are making fake products, copycat products and unqualified products. These products are then exported to international markets by unlicensed medical and health products exporters. From time to time these products cause disputes and in the worst cases, drug poisoning. This severely damages Chinese medical and health products in the world and also offers excuses to foreign countries to set up technical barriers. In order to change this situation, CCCMHPIE plans to formulate the "Administrative Standard on the Engagement of International Trade of Medicines and Health Products" and will thereby push forward the licensing requirements of companies to engage in the international trade of medicines and health products.

3. Suggestions to establish a credibility system

Building a credibility system cannot be separated from industry self-regulation and the industry's self-regulation can't do without the chambers of commerce. However, the legal standing of chambers of commerce is still not clear. Regulations and rules formulated by companies in the industry organized by the chambers of commerce lack legal basis and are difficult to gain support from government departments. These rules and regulations simply become formality and only "honest fellows will follow."

Therefore, first of all, we need legislation to define the legal status of the chambers of commerce. We also need support from relevant government departments to assist chambers of commerce in asserting their authority, so that *(chambers of commerce)* can punish companies who engage in smuggling, tax evasion or who have little credibility, and can honor those who are trustworthy, thereby creating an environment for a credibility industry.

Secondly, we are thinking whether we shall establish an enterprise credibility assessment system by the chambers of commerce. This system is to evaluate the credibility and give grades on the level of credibility. The evaluation result shall be notarized by notary public companies and be made public and serve as a supplementary tool to authorities such as customs, commodity inspection bureaus, the state administration of foreign exchange and the state administration of industry and commerce.

Thirdly, in accordance with the principle of unifying domestic and international trade, we need to solve the issue of companies which engage in foreign trade but cannot engage in domestic trade. According to the Pharmaceutical Administrative Law of the PRC, only companies which obtain the "drug operation company license" can engage in drug operation. However, this regulation only applies to domestic trade, not to foreign trade. Although, some well-established medicine and health product import and export companies later obtained their drug operation license, they are still restricted to only the wholesale business. This separation of foreign trade from domestic trade does not comply with the principle of unity of domestic and foreign trade. We hereby suggest

that relevant government departments grant the domestic trade right to those qualified companies, particularly those traditional medicines and health product import and export companies, to engage in the domestic trade of medicines and health products.

CCCMHPIE

July 17, 2003

SELECTED DEFENDANTS' TRIAL EXHIBITS

NOTICE FOR DISTRIBUTING THE MINUTES OF THE SECOND MEETING OF CHINESE VITAMIN C MANUFACTURERS, CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS, DATED DECEMBER 21, 2001

China Chamber of Commerce of Medicines & Health Products Importers & Exporters

Notice for Distributing the Minutes of the Second Meeting of Chinese Vitamin C Manufacturers

To member enterprises of Vitamin C Sub-Committee,

Pursuant to thoughts of the Ministry of Foreign Trade & Economic Cooperation ("MOFTEC") on reforming the export regulatory system, there will be a relatively significant changes to the regulatory manner of Vitamin C exports in 2002. In order to adapt to the new situation, China Chamber of Commerce of Medicines & Health Products Importers &Exporters ("the Chamber") held two meetings respectively on November 16, 2001 and December 21, 2001 with the persons in charge of the major Vitamin C manufacturers concerning issues of the self-discipline of Vitamin C export industry in 2002. Attached are the Minutes of the Second Meeting of Chinese Vitamin C Manufacturers. Please carefully review these and provide comments, and respond to the Chamber by December 29, 2002. If there are no comments, please implement in compliance with these Minutes.

The Chamber hereby makes this notice.

Attachment: the Minutes of the Second Meeting of Chinese Vitamin C Manufacturers

China Chamber of Commerce of Medicines & Health Products Importers &Exporters

(Seal)

December 25, 2001

Minutes of the Second Meeting of Chinese Vitamin C Manufacturers

On December 21, 2001, China Chamber of Commerce of Medicines & Health Products Importers & Exporters held a meeting with the heads of the Northeast Pharmaceutical General Factory, Jiangsu Jiangshan Pharmaceutical Co., Ltd., Shijiazhuang Pharmaceutical Group and Weisheng Pharmaceutical Co., Ltd., and Hebei Welcome Pharmaceutical Co. Ltd. at the Hua Yao Plaza in Shijiazhuang to discuss issues relating to Vitamin C exports in 2002. Zhang Changxin, Vice Chairman of the Chamber and Qiao Haili, Director of Western Medicine Department and Secretary-General of the Vitamin C Sub-Committee attended this meeting. This meeting was presided over by Qiao Haili.

Pursuant to MOFTEC's thoughts on reforming the export regulatory system, there would be relatively significant changes in the regulatory manner concerning Vitamin C exports in 2002. In order to adapt to the new situation, the Chamber held a meeting on November 16, 2001 with the heads of the major Chinese Vitamin C manufacturers, during which they agreed upon issues regarding the industry self-discipline for Vitamin C export. Specifically, each Chinese Vitamin C manufacturer shall export

Vitamin C in 2002 according to the export volume respectively committed by each of them. This meeting reached the following resolutions on the relevant specific issues relating to the implementation of the vitamin C industry self-discipline in 2002:

1. *The committed export volume as part of the industry self-discipline shall be strictly implemented.* From January 1, 2002, the Vitamin C products that are and declared at the customs for export by the aforementioned manufacturers shall be respectively recorded into the total export volume of each of such manufacturers; the volume of Vitamin C products declared for export by the import and export companies based on outright purchase or agency arrangements with the above-mentioned manufacturers, upon confirmation by the respective manufacturer, shall be accordingly recorded into the total export volume of such manufacturer. This work is crucial for the implementation of the self-discipline for Vitamin C export industry in 2002, and each import and export company shall actively co-operate and co-ordinate with the manufacturing companies with regard to their confirmations. Those import and export enterprises that are not in strict compliance with this requirement will be punished by Vitamin C Sub-Committee.

2. *Exports shall be balanced*. While all the Vitamin C manufacturers agreed to strictly control the export volume, it is imperative to keep the balance of the export. Such balance shall be implemented based on the average monthly export volume (including the export volume declared by the foreign trade companies through outright purchase or agency arrangement) of each manufacturer. To deal with any exceptional situations temporarily appeared in the market, each Vitamin C manufacturer is

allowed to have some additional export volume within the whole year apart from its average monthly export volume, with 200 tons for Northeast GPF, 150 tons for Jiangsu Jiangshan, 150 tons for Shijiazhuang Pharmaceutical Group and Weisheng, 130 tons for Hebei Welcome. However, at the end of the year the total export volume shall not exceed the total export volume committed by each manufacturer.

3. *A "Special Chop for the Export Contract"* will be used. Each Vitamin C manufacturer shall make such chop and use it on supply contracts with import and export enterprises from January 1, 2002.

4. *To punish any violations.* With respect to the Vitamin C manufacturers with violations of using disguised low prices or exporting beyond given volume, etc, when confirmed upon investigation, a penalty will be imposed on the violating manufacturer. Namely, five times of the export volume that is in violation shall be deducted from the total allocated export volume of the violating manufacturer. Penalties applicable to the violating foreign trade companies are to be formulated.

5. An industry self-discipline inspection group shall be formed, with the Secretary-general of Vitamin C Subcommittee as the leader, and each Vitamin C manufacturer will designate one mid-level officer as member.

THE ADMINISTRATIVE RULES OF THE VITAMIN C SUBCOMMITTEE, CHINA CHAMBER OF COMMERCE OF MEDICINES AND HEALTH PRODUCTS IMPORTERS AND EXPORTERS, APPROVED JUNE 7, 2002

China Chamber of Commerce for Import & Export of Medicines & Health Products VC Subcommittee

List of members (member organizations) of the Vitamin C Subcommittee Council, China Chamber of Commerce for Import & Export of Medicines & Health Products

Chairman of the Council:	Qiao Haili (also assuming the position of) Director of Western Medicine Department at China Chamber of Commerce for Import & Export of Medicines & Health Products
Member Organizations:	Northeast General Pharmaceutical Factory Import and Export Company
	Jiangsu Jiangshan Pharmaceutical Co., Ltd.
	Weisheng Pharmaceutical (Shijiazhuang) Co., Ltd.
	Hebei Welcome Pharmaceutical Co., Ltd.
Secretary General:	Qiao Haili (also assuming the position of) Director of Western Medicine Department at China Chamber of Commerce for Import & Export of Medicines & Health Products

Deputy Secretary General:	Wan Ning, Western Medicine Department at China Chamber of Commerce for Import & Export of Medicines & Health Products

List of member enterprises of the VC Subcommittee of CCCMPIE

1. Northeast General Pharmaceutical Factory Import and Export Company
2. Jiangsu Jiangshan Pharmaceutical Co., Ltd.
3. Weisheng Pharmaceutical (Shijiazhuang) Co., Ltd.
4. Hebei Welcome Pharmaceutical Co., Ltd.
5. Shanghai Medicines & Health Products Import & Export Corporation
6. Shanghai Sunve Pharmaceutical Co., Ltd.
7. Shijiazhuang Pharmaceutical Group Import and Export Trading Co., Ltd.
8. Jiangxi Medicines & Health Products Import & Export Corporation
9. Sinochem Hebei Import and Export Corporation
10. Anhui Chemicals Import and Export Co., Ltd.
11. Shandong Medicines & Health Products Import & Export Corporation
12. Hebei Medicines & Health Products Import & Export Corporation
13. Jiangsu Medicines & Health Products Import & Export (Group) Corporation

14. Zhuhai Baifuli Trade Development Co., Ltd.

15. Shandong Zibo Hualong Pharmaceutical Co., Ltd.

The Administrative Rules of the VC Subcommittee, China Chamber of Commerce for Import & Export of Medicines & Health Products

Chapter One General Principles

Article One *The Administrative Rules of VC Subcommittee of CCCMHPIE* is formulated in accordance with the relevant state laws, regulations and the *Bylaws of China Chamber of Commerce for Import & Export of Medicines & Health Products.*

Article Two The name of this organization is VC Subcommittee of China Chamber of Commerce for Import & Export of Medicines & Health Products (referred to as "the Subcommittee" hereafter), and is registered with the state's administrative organ for associations in accordance with the law.

Article Three The Subcommittee is a component of China Chamber of Commerce for Import & Export of Medicines & Health Products (referred to as "the Chamber of Commerce" hereafter), and is a self-disciplinary trade organization jointly established on voluntary basis by members of the Chamber of Commerce engaging in vitamin C import and export business. It does not have the status of a legal person.

Article Four The purpose of the Subcommittee is to: observe the state laws, regulations and the bylaws of the Chamber of Commerce, coordinate and guide vitamin C import and export business as well as relevant activities

and provide consultancy and services to members and governmental departments, maintain the normal order of vitamin C import and export activities, and protect fair competition, protect the national interests and the legal rights and interests of members, and promote healthy development of vitamin C import and export trade.

Article Five The Subcommittee accepts guidance and supervision from the Chamber of Commerce.

Chapter Two Functions

Article Six The Subcommittee plays the role of bridging and connecting between the government and the members, between tbc domestic and overseas markets. and between the relevant industries.

Article Seven The Subcommittee introduces the state economic and trade laws. regulations, guidelines and policies to the members, and guides and supervises the members to operate their businesses in accordance with the law.

Article Eight The Subcommittee coordinates and guides vitamin C import and export activities, promotes self-discipline in the industry, maintains the regular order of vitamin C import and export operations, and protects the interests of the state, the industry and the members.

Article Nine The Subcommittee studies methods and measures for expansion of vitamin C import and export trade, and organizes discussions about strategy and planning of import and export trade. The Subcommittee represents the interests of the members, inform relevant government departments of members' status, opinions

and suggestions, and makes suggestions to relevant government departments as the government makes policies concerning vitamin C import and export trade.

Article Ten The Subcommittee participates in domestic and overseas activities and international exchanges for promotion of vitamin C import and export, establishes and develops cooperative relationship with the domestic and international industrial organizations of the same nature, and helps members explore the international market.

Article Eleven The Subcommittee exchanges experiences with regard to developing vitamin C production, improving quality, improving operation and management, and promoting the integration of industry and commerce, collects and sorts relevant information about domestic and overseas VC markets, clients, production and sales, and provides consulting service to members.

Article Twelve The Subcommittee organizes relevant enterprises to respond to dumping accusations by foreign countries against vitamin C of our country; makes investigations into dumping or unfair competition activities of foreign products in our country that are reported by members, and request governmental departments to take measures according to the requirements of the industry.

Article Thirteen The Subcommittee implements other duties authorized by the government or the Chamber of Commerce, requested by members, or entrusted by trade agreement.

Chapter Three Member

Article Fourteen The following requirements must be met to apply for membership of the Subcommittee;

(1) Be a member of China Chamber of Commerce for Import & Export of Medicines & Health Products:

(2) Support this document;

(3) Be willing to engage in vitamin C import and export business and operate in accordance with the law;

(4) Have the intention to join the Subcommittee.

Article Fifteen Procedures for joining the Subcommittee:

(1) Submit application for joining the Subcommittee;

(2) Submit documents of registration with relevant regulatory departments of the state;

(3) The Subcommittee reviews the application according to aforementioned requirements, approves those who meet the requirements for joining the Subcommittee, and processes paperwork for registration.

Article Sixteen Rights of Members:

(1) The rights to elect, to be elected and to vote at the Subcommittee;

(2) Participate in various activities organized by the Subcommittee;

(3) Enjoy various services provided by the Subcommittee;

(4) Bring forth opinions, suggestions and proposals about relevant issues involving import and export;

(5) Bring forth opinions, suggestions and proposals on relevant issues involving the Subcommittee;

(6) Monitor the work of the Subcommittee, and bring forth opinions and suggestions about it;

(7) Expose enterprises and individuals who violate the state laws, regulations and policies, or provisions of this document, disobey the coordination of the Subcommittee. or damage the interests of the state or other members;

(8) Freedom to withdraw from the Subcommittee.

Article Seventeen Member's Obligations:

(1) Observe the *Administrative Rules* of the Subcommittee;

(2) Carry out resolutions and agreements of the Subcommittee;

(3) Actively participate in various activities organized by the Subcommittee;

(4) Complete work entrusted by the Subcommittee;

(5) Keep the Subcommittee informed by providing relevant information. materials and data;

(6) Accept coordination by the Subcommittee.

Article Eighteen A member shall inform the Subcommittee in writing of withdrawal from the Subcommittee, return relevant certificates related to membership, and process paperwork for membership cancellation.

Article Nineteen The Subcommittee will discipline members engaging in the following activities:

(1) Violate provisions of this document;

(2) Failure to carry out resolutions of the Subcommittee;

(3) Failure to carry out industrial agreements;

(4) Violate the state laws, regulations and rules in its business activities;

The disciplinary actions of the Subcommittee include: circulation of notice of criticism, issuance of warning, temporary suspension of membership, or cancellation of membership. Punishment must be approved by the Council of the Subcommittee (referred to as "the Council" hereafter).

Article Twenty The Subcommittee requires periodical member registration, and the time and content for registration will be determined by the Council. Failure to register within the defined time frame will result in automatic loss of membership.

Chapter Four Organizational Structure

Article Twenty-One The general meeting of the Subcommittee (referred to as "the General Meeting" hereafter) is the highest authority of the Subcommittee.

Article Twenty-Two The General Meeting exercises the following duties:

(1) Make decision on the work guideline and tasks of the Subcommittee;

(2) Formulate, review, and amend the *Administrative Rules* of the Subcommittee;

(3) Formulate, review, and amend the important policies and rules of the Subcommittee;

(4) Review the work report of the Council;

(5) Elect and dismiss Council members of the Subcommittee;

(6) Elect and dismiss members of the investigation team of the Subcommittee;

(7) Review proposals of the Council and the members;

(8) Make decisions on issues of termination;

(9) Make decisions on other important issues.

Article Twenty-Three The General Meeting is held once every year, and can be held in advance or postponed under special circumstances, upon approval by the Council through voting or upon a proposal brought forth by more than one half of the members.

Article Twenty-Four Upon a proposal jointly brought forth by one third of the members or by more than one half of the Council members, or upon a request by the government department in charge, an interim General Meeting may be held.

Article Twenty-Five The Interim General Meeting exercises the following duties:

(1) Review proposals by the Council or by the members;

(2) Formulate specific coordination plans;

(3) Coordinate other issues related to the work of the Subcommittee.

Article Twenty-Six The General Meeting or the interim General Meeting can be held only when two thirds of the members are attending. Resolutions of the Meeting are valid only when they are approved through voting by more than two thirds of the attending members.

Article Twenty-Seven A Council is set up in the Subcommittee. The Council is the executive body of the General Meeting, performs the routine work of the Subcommittee when the General Meeting is not in session, and reports to the General Meeting. The Council exercises the following duties:

(1) Carry out resolutions of the General Meeting and the interim General Meeting;

(2) Elect and dismiss the chairman, the deputy chairman, the secretary general and the deputy secretary general;

(3) Guide the routine work of the Subcommittee;

(4) Prepare for convening the General Meeting or the Interim General Meeting;

(5) Submit work report to the General Meeting;

(6) Organize and coordinate the specific implementation of plans;

(7) Admit enterprises into the Subcommittee;

(8) Receive, review and respond to proposals by members;

(9) Accept the arbitral decisions made by the investigation team of the Subcommittee, and penalize members in violation of the rules;

(10) Carry out other duties authorized by the government or the Chamber of Commerce, or entrusted by the General meeting.

Article Twenty-Eight The term of each Council is four years. Upon completion of the term, the General Meeting shall be held to elect a new Council. When the General Meeting is postponed or is held ahead of the scheduled time, the beginning and end of the Council's term will be defined accordingly.

Article Twenty-Nine The list of candidates for the new councils of the Subcommittee and how the Council will be produced will be proposed after the Council responsible for preparation for the General Meeting have collected input from all members in writing. The Council is democratically elected by the General Meeting, and the Council Members must be a member of the Subcommittee. Council members can be reelected.

Article Thirty The Council holds two meetings every year, which are called and presided by the Council chairman. When the Council Chairman thinks it necessary, an interim Council meeting may be called after seeking opinions from Council members, or when it is proposed by more than one half of the Council members. Under special circumstances, the meeting can be held by way of telecommunications.

Article Thirty-One The Council meeting can be held only when more than three quarters of Council members are attending. The resolutions thereof are valid only when they are voted on and approved by more than two thirds of the attending Council members.

Article Thirty-Two An investigation team is set up in the Subcommittee. The investigation team is the supervisory organ of the Subcommittee, and reports to the General Meeting of the Subcommittee.

Article Thirty-Three The investigation team of the Subcommittee exercises the following functions and powers:

(1) Monitor and implantation of the *Administrative Rules* of the Subcommittee and of various resolutions of the Subcommittee;

(2) The head of the investigation team is concurrently held by the secretary general;

(3) Receive reports from members of the Subcommittee on violation of the state laws, regulations, the *Administrative Rules* or resolutions of the Subcommittee, and carry out investigations accordingly;

(4) Organize inquiries of the violating members;

(5) Vote to arbitrate member activities to decide whether or not they are violations;

(6) Submit work report to the General Meeting of the Subcommittee;

(7) Submit arbitral decision on violations to the Subcommittee Council;

(8) Carry out other duties entrusted by the General Meeting of the Subcommittee or required by trade agreements.

Article Thirty-Four The term of the investigation team is the same as the Council, and a new team shall be elected along with the Council. Members of the investigation team are democratically elected by the General Meeting, and can only be produced from members of the Subcommittee. Members of the investigation team can be reelected. A member of the investigation team cannot be concurrently a Council member (Chamber of Commerce staff are exceptions).

Article Thirty-Five The investigation team of the Subcommittee does not hold regular meetings, and a meeting will be convened by team director based on circumstances and needs.

Chapter Five Leadership

Article Thirty-Six The Subcommittee has one Council chairman, one deputy chairman, one investigation team director, one secretary general, and one deputy secretary general.

Article Thirty-Seven The chairman and the deputy chairman are produced through democratic election by the Council with a one-year term, and can be reelected. The chairman can only be elected from the representatives of the member organizations of the Council.

Article Thirty-Eight The term of the director of the investigation team is one year, and can be reelected.

Article Thirty-Nine The deputy chairman of the Council, the secretary general, and the deputy secretary general of the Subcommittee are positions assumed by personnel of the permanent administrative body of the

Chamber of Commerce. Chairman of the Chamber of Commerce nominates candidates for deputy chairman of the Council, secretary general and deputy secretary general of the Subcommittee who are then voted on by the Council. Their terms are the same as the rest of the leadership as mentioned before. The secretary general can be reelected.

Article Forty Duties of the Council Chairman

(1) Convene and preside over the Council meetings;

(2) Represent the Subcommittee to the external world, and represent the Subcommittee in signing relevant important documents;

(3) Take charge of the work at the Subcommittee and the Council;

(4) Inspect the implementation of resolutions of the General Meeting and the Council;

(5) Report to the General Meeting and brief the latter on his or her work.

Article Forty-One The deputy chairman assists the chairman; and when the chairman cannot perform his/her duties for some reason, the deputy chairman shall work in the chairman's capacity.

Article Forty-Two Duties of the Director of the investigation team:

(1) Convene and preside over meetings of the Subcommittee investigation team;

(2) Take charge of the work of the investigation team;

(3) Inspect the implementation of the investigation team's decisions;

(4) Report to the General Meeting and brief the latter on the team's work.

Article Forty-Three Duties of the Secretary General

(1) Carry out resolutions of the General Meeting and the Council, and organize to implement the Subcommittee's work plans;

(2) Assist the chairman and deputy chairman of the Council;

(3) Take charge of the routine secretary and liaison work at the Subcommittee;

(4) Take charge of the management of routine meetings of the Subcommittee;

(5) Recruit staff for the Subcommittee based on the needs of the Subcommittee;

(6) Carry out other duties entrusted by the General Meeting, the Council, the investigation team, the chairman of the Council and the director of the investigation team.

Article Forty-Four The deputy secretary general assists the secretary general; and when the secretary general cannot perform his/her duties for some reason, the deputy secretary general shall work in the capacity of the secretary general. The deputy secretary general attends the Council meeting as a nonvoting delegate.

Chapter Six Procedure for Amendment of the *Administrative Rules*

Article Forty-Five These *Administrative Rules* can be amended only when a motion for amendment is put forward by one half of the Subcommittee members or two-thirds of the Council members.

Article Forty-Six The amended version of the *Administrative Rules* must first be voted on and approved by the Council before being submitted to the Chamber of Commerce for review.

Article Forty-Seven The amended *Administrative Rules* must be approved by the General Meeting. Once approved, it must be submitted to the Chamber of Commerce for review. It takes effect upon approval by the Chamber of Commerce.

Chapter Seven Termination Procedure

Article Forty-Eight When the Subcommittee needs to be cancelled for reasons such as the completion of purpose, voluntary dissolution, division, or merging, the Council shall put forward a motion for termination.

Article Forty-Nine The motion for termination put forward by the Subcommittee must be approved through voting by the General Meeting. It then must be reviewed and approved by the Chamber of Commerce and the overseeing department of the Ministry of Foreign Trade and Economic Cooperation.

Article Fifty The Subcommittee will be terminated upon completing paper work for cancellation with the state regulatory organ for associations.

Chapter Eight Supplementary Articles

Article Fifty-One The Subcommittee shall have no independent financial department, and fund needed for operation will be collected and expended by the Subcommittee itself.

Article Fifty-Two In order to monitor the implementation of self-disciplinary agreements within the industry, the coordination plans or resolutions of the industry, the Subcommittee—with members' consensus—can collect a certain amount of guarantee deposit for breach of contract. The specifics of collection expenditure will be separately formulated by the Subcommittee General Meeting, the Interim General Meeting or the Council.

Article Fifty-Three The *Administrative Rules* was voted on and approved by members on June 7, 2002.

Article Fifty-Four The Subcommittee Council will have the authority to interpret the *Administrative Rules.*

Article Fifty-Five The *Administrative Rules* takes effect on the day when it is approved by the Chamber of Commerce.

EXCERPTS FROM THE TRANSCRIPT OF TRIAL PROCEEDINGS HELD IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

EXCERPT OF PROCEEDINGS BEFORE THE EASTERN DISTRICT OF NEW YORK, FEBRUARY 25, 2013

[1]UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

06-MD-1738

IN RE

VITAMIN C ANTITRUST LITIGATION,

Plaintiff,

-against-

HEBEI WELCOME PHARMACEUTICAL CO. LTD., *et al.*,

Defendant.

United States Courthouse
Brooklyn, New York

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE BRIAN M. COGAN
MAGISTRATE JUDGE JAMES ORENSTEIN
UNITED STATES DISTRICT JUDGE, and a jury.

[3](The following was held before Judge Cogan.)

THE CLERK: In Re: Vitamin C Antitrust Litigation. Docket number M6-01738.

Counsel, state your appearances starting with the plaintiffs.

MR. ISAACSON: Lloyd Isaacson for the plaintiffs, Your Honor.

MR. SOUTHWICK: James Southwick, Susman Godfrey for plaintiffs.

MS. CHUTKAN: Tania Chutkan, Boies, Schiller & Flexner for plaintiffs.

MR. MASON: Good morning, Your Honor. Dan Mason for Weisheng Pharmaceutical and China Pharmaceutical Group.

MR. BUETZOW: Good morning, Your Honor. Eric Buetzow for China Pharmaceuticals.

MR. CRITCHLOW: Good morning, Your Honor. Charles Critchlow for Hebei Welcome Pharmaceutical and North China Pharmaceutical Group.

MR. PRESCOTT: Good morning. Daniel Prescott also for Hebei Welcome and North China Pharmaceutical Company.

MR. SEROTA: And James Serota for Northeast Pharmaceutical.

MS. STILLMAN: And Catherine Stillman for Hebei Welcome Pharmaceuticals and North China Pharmaceutical Group.

THE COURT: Okay. Before you go ahead with [4]Judge Orenstein and select a jury, based on the not at

all atypical flurry of activity over the weekend leading up to the trial, there are a couple of observations I wanted to pass on to you.

I know the defendants have been chafing at the Rule 44.1 decision that I made and I understand their concerns about what issues will be tried to the jury and what issues I decided over their objection including the resolution of certain factual matters in the context of the 44.1.

What I wanted to emphasize to everyone is we are not redoing the 44.1 in this trial. I understand defendants have an issue with what I did. I believe I was entitled and indeed obligated to do it, and this trial is not going to be effectively a reargument before the jury of those determinations.

Having said that, it is possible that because of the issues that will clearly have to be tried to the jury, for example, the plaintiff has to prove a prima facie case to get to the jury, maybe they won't. They have to prove injury in fact to the plaintiffs. They have to prove damages. But in the course of doing that, there may be things that touch upon or overlap my ruling on the 44.1 issues and, like I said, we're not rearguing that motion, but if that does happen, I want everyone particularly the defendants to be on notice that depending on how we decide to charge the jury and the form of [5]verdict that we use at the end, it may be that I determine to treat certain determinations by the jury as advisory rather than binding.

Obviously, that won't be the case on damages and other necessary elements of the plaintiff's case, but if there is an overlap with the 44.1 decision, everyone should know that's a possibility.

Now, I just received a letter saying that the parties are in disagreement over what exhibits can be shown to the jury during openings. I'm a little surprised at that. It's a little unusual in a case like this to show exhibits to a jury during openings. It's one thing if you have a contract case and you put the contract up during your opening. That's one thing. With all the little pieces here, I'm not sure it's advisable but I will let the parties proceed how they think best.

I have made a lot of rulings on what exhibits can be admitted and what exhibits cannot be admitted before this jury. It seems to me to the extent I ruled an exhibit is admissible, then if the party really wants to, they can show that exhibit to the jury. If I ruled that it's inadmissible, then they cannot.

As to those I think comparatively small volume of exhibits on which I have not yet ruled, but which I think I've given the parties some additional guidance by suggesting that [6]I'm not rearguing the 44.1 ruling in front of this jury, as to those exhibits, it seems to me you take your chances, just like telling a jury what a witness is going to testify to. If, in fact, that witness' testimony is not allowed, your adversary is going to point that out on closing, that you made certain promises about what a witness would testify to and a witness did not testify. If you refer to an exhibit in front of the jury that I determine to be, in the course of a trial is inadmissible, then no doubt your adversary is going to point out that no such evidence was presented as promised during the opening statements.

So that's as much guidance that I'm willing to give as far as the substantial amount of rulings that I've made on other exhibits prior to today.

The only other thing I would say about opening statements is that please do not object during your adversary's opening statement unless you really feel that at that moment, you must make a correction that is so irreparable, if it goes uncorrected, that effectively you're moving for a mistrial.

I will give you the opportunity after your adversary completes their statement to come to side bar and tell me what you think should be stricken from that and if I think it's appropriate, I will tell the jury that that should not be 25 considered at that point. The jury, of course, is getting an [7]instruction in opening statements, closing statements and attorneys' comments and generally are not binding on them and are indeed not evidence to be taken into account by them, so it seems to me unnecessary but I don't want repeated interruptions of opening statements to the extent that we can avoid those.

All right. Anything further before we get Judge Orenstein?

MR. MASON: Your Honor, may I just address briefly the comments the Court has made on the 44 rule?

THE COURT: You may.

MR. MASON: Thank you, Your Honor.

Your Honor, I'm Dan Mason for Weisheng China Pharmaceuticals. I don't address the Court here to argue anything, but I want to make sure that I follow and

understand what Your Honor is saying and maybe it's not inconsistent but I don't want to, I just want to make sure.

At the July 12th status conference at the hearing, you said at page seven the following.

The plaintiffs recognize and I think I recognized at the time and I certainly recognize now that there are factual issues surrounding the determination of where the Chinese law actually precluded the defendants from doing anything but fixing the price of the vitamin C so there are things for the jury to determine and I'm going to let you present that stuff [8]to the jury. I am not going to say, oh, that's precluded by my summary judgment decision and so you have, we're the defendants, relatively free reign in presenting what seemed to be an essentially duress offense to the jury.

I read that and I took that and I do take it and I think what Your Honor said is correct. I don't want to waive any other points you've made. That still stands and that I can proceed, the defendants can proceed under that understanding. And that nothing Your Honor said this morning is inconsistent or you haven't changed your mind or going in some other direction.

I don't do this to argue because I know we've done a lot of that. I just want to make sure that I'm following the Judge's direction.

THE COURT: I appreciate that. Your remark is totally appropriate.

I have not changed my mind from that. There is a sliver of duress that my understanding is will be presented before a jury. When I say a sliver, I mean the space

between my decision and a jury's full out determination of what Chinese law allowed which we're not going to do.

We are, my understanding is, trying essentially a duress offense and I will let you go ahead and try that. So I'm not changing my mind on that.

MR. MASON: Okay. But as I understand it, you have [9]said that we can refer to Chinese regulation to the extent they were the documents that compelled the defendants to do what they did, Mr. Qiao Haili is going to testify about these things.

THE COURT: I expect Mr. Qiao will make reference to certain regulations and directives. That does not mean the directives and regulations come into evidence or if they do, and I'm not deciding this now, it will be with an instruction to the jury that they are for the limited purpose of explaining Mr. Qiao's testimony, not in establishing what the law of China is.

MR. MASON: Okay. And I appreciate that.

THE COURT: Okay.

MR. MASON: This one final point. Do I understand or do I correctly understand Your Honor's comments with regard to opening statements and exhibits, that counsel can refer to what they want that has not been precluded and we take our chances as to whether you agree or not, but there's not going to be any objection during opening statement that you can't use it?

THE COURT: Yes. That's the way I would like to proceed.

Is your opening statement really that heavily dependent on the documents?

MR. MASON: Not at all.

[10]THE COURT: I wouldn't expect it would be.

MR. MASON: I just want to make sure, again, I don't violate any rules or expectation Your Honor has.

THE COURT: No. I appreciate your concern and we recognize the way this trial has come about, it's kind of a delicate balancing act and everyone is going to do their best to walk along the mountaintop that we're on here.

MR. MASON: Thank you.

MR. ISAACSON: Your Honor, just so you're not surprised by the opening statement and we're talking without mentioning certain exhibits that are at issue, plaintiffs have some business documents they're going to present and we can adjust to your statements without any problem.

Defendants have two exhibits that they want to show, one of which is one of the regulations. They want to show that in opening to the jury. And the other is a document that was produced a week ago. It's some sort of identification card from Mr. Qiao Haili that has the Ministry of Commerce's name on it. It was produced a week ago. We weren't --

THE COURT: Does it matter now? Is there any question he had an ID card when he worked for the government?

MR. ISAACSON: I would have liked to have asked him questions about it too because we didn't understand

the card and we were denied that opportunity. It was not part of the proffer.

[11]THE COURT: All right. On the regulation, again, I leave it to Mr. Mason to decide whether he wants to show it to the jury. If it doesn't come into evidence, and I think it either won't or it will for a very limited purpose, then you can talk to the jury about it if there's no such evidence in front of them and, of course, we will get a question from the jury during deliberations can we please get a copy of the regulations which I will say no.

As to the ID card, what's the sore story on that, Mr. Mason?

MR. MASON: I'm holding it in my hand. This was from Mr. Qiao. It wasn't a part or defendants didn't have it. They never asked for it. They deposed him for two days. It's an ID card and if you want, Your Honor, I can give it to the clerk.

THE COURT: Why is it significant to your case?

MR. MASON: Because it shows he's a member of the Ministry of Commerce and he's a part of the government.

THE COURT: Is there any dispute about that?

MR. MASON: Yes, there is.

MR. ISAACSON: Yes, there is.

THE COURT: I see.

MR. MASON: They never asked for this.

THE COURT: But who would ask for that?

MR. ISAACSON: That's not even true.

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EXCERPT OF THE OPENING STATEMENT OF DANIEL S. MASON, ESQ., FOR WEISHENG PHARMACEUTICAL CO., LTD., FEBRUARY 25, 2013

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[211]What occurred with regard to self discipline then was this concept that the Chinese also called industry coordination and industry coordination simply is that the individual companies in that industry are required to coordinate their pricing and product limitations.

[212]The testimony in this case will be entirely consistent with that and when you see a document in isolation, the name of the document will say -- and he's going to show some, there's no doubt, we agree -- we, the defendants -- agree to this price. He's going to say that the plaintiff will say, hey, it didn't say there if you don't agree you're going to be compelled. It's interesting that one of the witnesses in this case, and counsel mentioned Ms. Huang (ph), she's the former sales manager, he compared the relationship between Mr. Qiao and the Chamber to a parent and his or her child. You have a young child at home and the parent decides that that child is watching too much television a week, and the parent said to the child you're going to watch six hours of TV a week or whatever it is. You come to me and you tell me how you want to do that. I want to watch two hours on Tuesday night, four hours on Saturday, or some combination. Well, is that voluntary that the child does that? Does the child say, well, I'm volunteering to do this? Of course not. Similar in this situation. The act the Chinese government was trying to accomplish, which is limiting competition, was done in a similar way. You know the marketplace. We have

to accomplish this goal, we have to restrict competition because that is what the government wants. We are going to give you – that is the government is telling the manufacturers in the first instance you decide how you want to do it, and if we like [213]that, and we accept that, then we will. Because you guys are in the marketplace you know the market. Mr. Qiao doesn't spend all his time on Vitamin C. He has other companies -- other industries to deal with, too, but if you don't do it, I'm going to make you do it, and if I make you do it and you don't listen to me there's going to be sanctions. There's going to be penalties. Excuse me. That's what the evidence in this case will show you.

Can you put up number 28, please, for a moment.

We have four. So, again, I don't want to show you hundreds of documents at this point but I do want to show you this one. This is a document -- I am not going to characterize it, it is just a document from the government, and it talks about to punish any violation and in this one they're saying and I'm paraphrasing, and you ask read it for yourself, but they're basically saying: If you don't do what we tell you, a penalty will be imposed on you. The penalty in this case is five times the export volume. It is a violation, shall be deducted from the allocated export volume. What does that mean? The Chinese government tell us you, can sell X pounds or X kilos of Vitamin C to the United States. That is all you can do, but if you violate what we tell you, we are going to cut you back. You can't sell that much. So it's a violation. Is this voluntary? It is the government document. Showed you a lot of documents, didn't show you any of these. I think it's [214]important that you understand the source of the authority that Mr.

Qiao comes with. Vitamin C has been regulated by the Chinese government for 25 years and there were a whole bunch of regulations that Mr. Qiao will explain to you and these were regulations issued by the Ministry of commerce, the highest level of trade of the government trade agency in China and his authority also stems from being the director of a China Chamber of Commerce, the Medical and Health Product Import and Export which counsel referred to and when you see his card it is on his card. And Mr. Qiao also formed within the Chamber of Vitamin C subcommittee group and he did that pursuant to the government's directive.

Now, counsel didn't mention the Vitamin C subcommittee. He had the Ministry of Congress up here. They were like the big government agency on trade and commerce for the entire Peoples Republic of China and under that he had they call these chambers, and they were the chamber for Vitamin C. Could have been chambers or industries, too, but they were chambers for Vitamin C, and there was a guy who was put in by the government and his job was to regulate industry members in that chamber, in this case Vitamin C, and then Mr. Qiao was in the chamber specifically formed as Vitamin C subcommittee group and members of the subcommittee group were the manufacturers. They had to become a member if the wanted to have export.

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EXCERPTS OF THE DIRECT EXAMINATION OF WANG QI OF JIANGSU JIANGSHAN PHARMACEUTICAL CO., FEBRUARY 26, 2013

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[315]Q Let's move to June 2003.

Exhibit 136 -- no. I'm sorry. Exhibit 78.

[316]Is Exhibit, Exhibit 78 a monthly report for June 2003 that you delivered on July 6, 2003?

THE INTERPRETER: Did you say July 6th?

MR. ISAACSON: Yes, July 6th at the end of the memo.

THE INTERPRETER: 78, right?

MR. ISAACSON: Yes. June summary.

THE INTERPRETER: Yes, but the date is August 7th.

MR. ISAACSON: On page three at the bottom? He should be looking at the Chinese, in any event. I see 7/6.

THE INTERPRETER: Oh, yes. Two reports stuck together.

MR. ISAACSON: I'm sorry. I apologize for that. We're just going to look at the first one.

A Yes, I must have written this one myself.

MR. ISAACSON: All right. I would move to admit Exhibit 78, the June work summary, into evidence.

MR. MASON: Fine.

THE COURT: 78 is admitted.

(So marked.)

(Exhibit published.)

Q Now, in item five, you discussed a Chamber of Commerce meeting, correct?

A Yes.

Q And you recorded on June 11th your company organized a meeting on market analysis among six domestic manufacturers [317]and the Chamber, is that right?

A That's what's written here.

Q And you also recorded that we all agree, meaning the participants, to set the floor price at $9.20 USD per kilogram.

A Yes, that's what's written here.

Q And your hope, you recorded, was to slow down the speed of the market price of vitamin C falling, is that right?

A Yes, that's what's written here.

Q No one from the ministry -- did you attend this meeting?

A I did participate in the meeting in Ging Dao, but whether it was this one, I don't remember.

Q And you recorded that the agreement to set the floor price at $9.20 per kilogram, the effect of that was very limited, is that right?

A Yes. It is what is written here.

Q While -- and you recorded that while there was agreement at the meeting, every manufacturer was quoting prices lower than the floor price that was agreed?

A That's what's written here.

Q All right. The vitamin C companies felt free to quote prices lower than the agreed floor price, is that right?

A Whether it's allowed to report under the price, limit price is not related to this record.

[318]DIRECT EXAMINATION CONTINUED

BY MR. ISAACSON:

Q My question was Vitamin C company felt free to quote prices lower than the $9.20 agreed for by --

A There was still a lot of limitations.

Q My question was the companies felt free to quote less than $9.20 per kilogram, didn't they?

A From what I understand from the record and what is written here, my understanding is there was some actions taken by the manufacturers of doing that, but whether there was an agreement there that they were allowed to do that, that is different.

Q You don't recall anyone being punished for quoting prices less than $9.20 per kilogram, do you?

A I don't remember clearly.

Q And other than what you wrote here, you don't remember what was discussed at the June 2003 meeting?

A I cannot remember clearly.

Q Let me ask you to go to the next one, July 2003 Exhibit 53. Exhibit 53, this is a memo you prepared of Vitamin

C subcommittee meeting -- excuse me -- that you dated August 8, 2003 for meeting on July 26th; is that correct?

A What exhibit is that?

Q Fifty-three.

A Oh, 53 (perusing). Yes, I did write that.

[319]MR. ISAACSON: Move to admit Exhibit 53.

MR. MASON: No objection.

THE COURT: Received.

(Exhibit 53 so marked)

Q Now, you attended this meeting correct, sir?

A I did attend.

Q Let me ask you about your meeting summary. There were some remarks about item three about what Mr. Chow Hili had to say?

A That is what I recorded.

Q And in the third bullet you recorded a question: Did he ask the companies can each producer take turns to stop production for maintenance and repairs question mark.

A Just what is recorded here.

Q In the next bulletin he discussed a targeted price level; is that right, and you recorded that he said it shall neither incur an anti-dumping lawsuit, nor give profit room for western producers, nor cause additional domestic investment; is that correct?

A This is what was recorded was what he said at the time.

Q Do you recall that he suggested that prices should -- that the target price level should not be so low as to incur an anti-dumping lawsuit?

A If that is what is written.

Q And do you recall that he also said prices should not be [320]too high as to provide profits for European producers or cause additional domestic investments?

A That's what's written.

Q And the targeted price level, that's the discussion of the minimum price for verification and chop; is that correct?

A I'm not sure whether what is said here, the target pricing level, it is the same as the minimum price level that you stated.

Q Now, you also recorded some remarks by general manager Kong; is that right? That's your general manager?

A Correct.

Q And general manager Kong said at the meeting you recorded with regards to the export restricted price of U.S. dollars $9.20 per kilogram, it is cancelled as of today?

A That's what's recorded here.

Q He, Mr. Kong, announced the cancellation?

A No, that's not what I meant. I think that is a misunderstanding. This record only indicated Qaoi Hili made this one, two, three, four comments, and then the general manager Kong also made the following two points.

Q Yes.

A This only recorded the contents of what they stated.

***

[325]Q You can look at Exhibit 138. Now, this is the January 2004 board summary you prepared and submitted on February 2nd, 2004; is that correct?

A I did write that in.

MR. ISAACSON: I move to admit 138.

THE COURT: 138 is received.

(Exhibit 138 so marked)

Q I'm going to ask you about item five in your report. Do you see where after -- there's a discussion of local prices of $8.50 at European and American markets?

A It is written.

Q All right. And next you say: Because primary domestic Vitamin C manufacturers uniformly and seriously implemented [326]strategy limited production to protect prices prior to January, do you see that, and that's a reference to the domestic Vitamin C manufacturers implementing the agreement from the Beijing meeting on December 26th; is that right?

A Yes, that means the requirements from the meeting before the interview.

Q The Beijing meeting?

A Yes, supposedly.

Q And at the end of that item you say: Some manufacturers might accept orders that are slightly lower than $9 per U.S. kilogram which will not lead to fighting for orders by lowering prices, that's what you recorded, right?

A Yes, that was recorded.

Q And you knew that from your communications with the other Vitamin C companies?

A I don't know what the circumstances were at the time, but regarding market conditions, we usually get it from the market and the users' avenue.

Q But here you knew what the manufacturers were going to do before they set the price, you knew that they might accept orders slightly lower than $9 per kilogram, right?

A This is sentence is a description of the market conditions, and for such market conditions we communicate directly with our users, our distributors.

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[356]Q Let's move to 2005. Exhibit 87.

Exhibit 87, is this an e-mail that you sent on May 22, 2005 with an attached memo you wrote of a meeting on May 19, 2005?

A Yes. Yes, I wrote this.

MR. ISAACSON: All right. I move to admit.

THE COURT: All right. That's received over objection.

(So marked.)

(Exhibit published.)

Q You attended this meeting, did you not?

A Yes.

Q And you wrote remarks by Mr. Qiao Haili on the first section, number one?

A I did.

Q And what you reported was that he said as the price is gradually decreasing, he hopes that each manufacturer will take the possibility of anti-dumping highly seriously?

A That's what's described, yes.

[357]Q And moving farther down, you recorded some remarks from General Manager Feng Zhenying?

THE INTERPRETER: Mister --

MR. ISAACSON: Feng, F-E-N-G.

A The general manager Feng.

Q Yes. Feng. He hopes that steps will be taken to stabilize the price properly such as each manufacturer reducing its production volume proportionally.

And he asked that question, right?

A I don't remember why there was a question mark either.

Q But general manager Kong responded to general manager Feng that he did not agree to the proposal of proportionally decreasing production by each manufacturer?

A Yes, what general manager Kong said here is not necessarily an answer to what was stated by general manager Feng. These are just what they said.

[358]BY MR. ISAACSON:

Q Okay.

A For example, say item number two could be an answer to what Qiao Haili said at the top.

Q And then after general manager Kong spoke about what he did not agree with you recorded proposals that were made by Huang Pin-she?

A With respect to sequence, I really don't remember who spoke first, who spoke later in sequence.

Q But at some point Mr. Huang Pin-she made the proposal you put into this memo?

A Yes, yes, that is what is written.

Q So Huang Pin-she, for example, made a proposal to use current prices for obtaining the export preauthorization stamp as the forum price to explore Vitamin C?

A That is what is stated.

Q And he also made a proposal that during July and August each manufacturer would stop fermentation for about 20 days?

A That's such a sentence here.

Q Fermentation is the method of producing Vitamin C, correct?

A Correct.

Q And in response to Mr. Huang Pin-she's proposals, Weisheng, Welcome and Jiangshan expressed that it principally agreed to proposals, right?

[359]A Yes, that's how it is described.

Q NEPG and another company said they would bring the proposal back and have their company leadership make a decision, correct?

A That is what is written here.

Q And then in terms of executing these proposals, the manufacturers would decide that when they met again in June in Shanghai?

A Well, what he stated you said was manufacturers, but manufacturers are not stated in here.

Q When it refers to Shanghai, that was an event that was an exhibition, correct?

A Correct.

Q Now, at the bottom you wrote a section on explanations?

A Yes, it is here.

Q These are your personal observations, they are not recording what happened at the meeting, correct?

A Yes.

Q Your second observation was as for the proposals for proposal shut down limitation, each manufacturer will as usual have it own calculations?

A That is what is stated here.

Q In addition, you said due to the damage to the agreement caused by Weisheng last year, does that help you remember that Weisheng pulled out of a production suspension?

[360]A Exactly what happened, I don't recall.

Q But these are your observations from the time?

A Correct.

Q Due to the damage the agreement caused by Weisheng last year you wrote, it is still an open question as to what extent the consensus made at that meeting will be implemented, right?

A That's what I wrote here.

Q You didn't know at the time whether the consensus amongst the manufacturers the agreement would work?

A But there's no agreement here. Which agreement are you referring to?

Q I'm sorry. The consensus at the meeting, you didn't know at the time whether the consensus amongst the manufacturers would work?

A But like I said, I asked him before that's no agreements described here.

Q My question is about the consensus.

You didn't know at the time whether the consensus amongst the manufacturers would work?

A I see here is like mutual understanding.

Q Fine.

You did not know at the time whether the mutual understanding amongst the manufacturers would work?

A That's what is stated here.

Q And you didn't write in your observations that anybody [361]was going to make the manufacturers go along with the common understanding?

A Nobody's going to force them.

Q You didn't write that anybody would force them to go along with the common understanding?

A Is not written here. Yes, I misunderstood the word.

Q Thank you.

We talked a couple times about the verification in chop price. Now, after you became department manager for, approximately, the next six years wasn't $3.35 the price for verification and chop?

THE INTERPRETER: I didn't hear the first part of the question counsel.

Q After you became the department manager for import-export for, approximately, the next six years wasn't $3.35 the verification and chop price?

A There ought to be some variation.

Q Well, you don't recall any time during the six years after you became a department manager where the minimum price was any higher than $3.35 per kilogram, do you?

A Yes.

Q You do. Maybe we have a double --

A Yes, there was higher price.

MR. ISAACSON: I want -- page 220 of this deposition. Now, I'm talking now to counsel.

[362]THE COURT: Before you do that, let me try to clarify. Are you saying there was a verification and chop price higher than $3.35?

THE WITNESS: From what I recall, yes.

THE COURT: All right.

MR. ISAACSON: Page 220 at the bottom line 24 continuing to the top of the next page. Are you all set?

Q Sir, at your deposition did you answer the following question and give the following answer:

Question --

THE COURT: I mean were you asked the following question and did you give following answer.

MR. ISAACSON: That is works as well.

Q (Reading): Question: You don't recall any time where the minimum price was higher than 3.35 per kilogram?

Answer: It seems to me, no.

THE COURT: Ask him were you asked that question --

Q Were you asked that question and did you give that answer?

A I don't remember what happened when I was questioned.

Q And when the minimum price for verification and chop was $3.35, the Chamber of Commerce did not care if your company sold Vitamin C at a price higher than $3.35; isn't that right?

A Correct. That is like a minimum price.

Q You were free to decide about prices above $3.35 when [363]that was the minimum price?

A Yes, when it's over they don't care.

Q When you charge prices higher than $3.35 no one ordered you to do that -- let me say no one outside your company ordered you to do that?

A We make the price quote according to the market conditions.

Q And no one ordered you outside of your company to charge prices higher than $3.35 when that was the minimum price?

A Let me figure out what you're trying to say about your question. You're talking about anybody outside the persons in charge of the company?

Q Yes.

A Meaning whether anybody outside of my company who would request my company to charge over -- more than $3.35?

Q Not request, order you, direct you to.

A No.

Q Now, there were times after -- after you had been in charge of the Import-Export Department or the manager for some years, there came a time when you and the Chinese manufacturers were charging less than the minimum price of $3.35 for export?

A It did happen like that.

THE COURT: Mr. Isaacson, at a convenient point, it doesn't have to be this minute, we would like to take an [364] afternoon break.

MR. ISAACSON: I will wrap this up.

Q And when your company charged less than $3.35 you don't recall being punished for that?

A Punishment, no, but we did encounter a lot of difficulties because the export price has to be exported according to the $3.35 price; otherwise, we will not be able to get the export permit.

Q So what you would do to deal with those difficulties is you would give rebates or refunds to customers to bring the price below $3.35; isn't that right?

A It did happen, but not often.

Q When it happened you would charge -- you would create a document saying the customer was being charged $3.00 or 35 cents or above and you would rebate or refund some of that money, correct?

A It did happen like that.

***

[367]Q If I can ask you to turn -- I haven't done this for you very often -- to the next tab Exhibit 143. This is going back to August 2005. Is this a monthly report with your attached e-mail monthly report for August 2005 that you delivered on September 4, 2005 by e-mail?

A I did write that.

MR. ISAACSON: I move to admit Exhibit 133.

THE COURT: It is received.

(Exhibit 133 so marked)

Q Again, in the second bullet on item number one discussing price, did you report the export price difference of normal Vitamin C accumulated in previous months by AMC, namely, the real export price lower than the price limit set of by Customs office of U.S. dollars $3.35 per kilogram, little A?

A Little A, okay.

Q Export price difference normal Vitamin C accumulated in previous months by AMC, namely, the real export price lower than the price limits set by Customs Office of U.S. dollars 3.35?

A What is your question?

Q You were recording that prices were being charged below the export price of $3.35, correct?

A Yes, that is what is stated here some of these sales to AMC was below the customs limit price of 3.35 and that [368]deferential has reached $53,000 U.S. dollars.

Q Thank you.

***

[369]MR. MASON: Well --

THE COURT: What it says in the Chinese?

MR. MASON: I don't read Chinese so --

THE COURT: It is not Chinese, it is English.

MR. MASON: It says what it says here, Your Honor.

THE COURT: It says U.S. dollar 53,000.

All right. Go ahead.

MR. ISAACSON: We agree it says here what it says.

Q Exhibit 144. I am sorry. Yes, 144.

Now, this is a memo from a meeting November 16, 2005.

It says here: It was attended for your company by Mr. Qiang. You can tell me if I'm wrong, I don't believe you prepared this memo but did you receive a copy of it?

A I think I must have gotten it.

MR. ISAACSON: I move to admit Exhibit 144.

THE COURT: That is admitted over objection.

(Exhibit 144, so marked)

Q All right. In item two there's some references to some statements by Mr. Qiao. Do you see where it is reported that he said: I heard that someone offered a price below U.S. $3, U.S. $2.90 delivery to the buyer's side?

THE INTERPRETER: U.S. dollars, what?

MR. ISAACSON: Two dollars.

A That is what is written in the document.

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EXCERPT OF THE DIRECT EXAMINATION OF HUANG PINQI OF HEBEI WELCOME PHARMACEUTICAL CO., LTD. AND NORTH CHINA PHARMACEUTICAL GROUP CORP., FEBRUARY 28, 2013

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[414](The following took place in open court).

BY MR. MASON:

Q Sir, do you recall being asked about a memorandum that you wrote in August 2002 where you made reference in the memorandum to the fact that there had been some contacts from sales department of the various Vitamin C manufacturers on the topic of exchanging information, discuss possible raising of prices?

A Yes, that happened yesterday. That did happen.

Q And isn't it a fact, sir, that you were not -- let me ask a preliminary question. These were internal memos that you gave to your boss or people within your own company?

A You are talking about the records?

Q Yes.

A That is for internal consumption.

Q You will not state in a memo necessarily that the Chamber told us to have these communications, you would just say the fact that you had them; isn't that correct?

A In most memos people just express the plain points, the expressions.

Q Right, but you didn't tell them that the Chamber had told me to have these conversations because you didn't think it was necessary to say that?

A It was not mentioned in the memos.

Q But the reason it was not mentioned, I take it, was [415] because you didn't think it was necessary to mention?

A That's for internal usage. Besides the people I was reporting to -- my colleagues and my superiors, they have understanding of the circumstances.

Q Okay. The circumstances being that this conduct was -- excuse me -- the circumstances being that the Chamber told the companies to engage in such information on price discussions?

A They all know.

Q Now, sir, you were asked some questions by counsel about quotas?

A It was mentioned.

Q And quotas refers to how much product a Vitamin C manufacturer can sell for export?

A Yeah, quota, that means export quota. They have two meanings. One concerns the control of the quantity. In other words, there's a quota figure for the total export quantity for China, and therefore, each manufacturer, how much of a percentage of their quota -- how much of their quota is -- how do you say -- assigned to the -- each manufacturers. There's certain percentage for each manufacturer.

Q And in fact, the Chamber of Commerce assigns the quotas to the manufacturers?

MR. ISAACSON: Objection.

THE COURT: I'm sorry. What is the objection?

MR. ISAACSON: Time period.

[416]MR. MASON: That is for redirect.

THE COURT: I agree. Overruled.

A I haven't finished what I was saying about the two meanings. The second thing was regarding pricing, especially towards the request for minimum export price. I think the meanings for quota refers to those main issues.

Q Okay. Let me ask you, Mr. Wang, with regard to the amount -- the quantum of quota, with regard to the amount of quota each of the Vitamin C companies in China had, those amounts were told to the companies by the Chamber of Commerce; isn't that correct?

A Each manufacturer could participate in a discussion. They could present their viewpoints and their requests but the final decision was up to the Chamber.

Q And so it was the Chamber that determined at the end of the day the quota for each of the companies, right?

A The final decision and approval was by them.

Q So although there could be a discussion about the amount of the quotas, and oftentimes there was a discussion about the amount of the quotas?

A There would be one of the main subjects of the agenda.

Q Was it was the Chamber who at the end decided what the quotas would be?

A The convening of the meeting, and the final decision of the meeting was by the Chamber.

[417]Q And in fact, isn't it true, sir, that sometimes the Chamber might take away a quota from a company if they -- if the Chamber determined that the company had done something wrong, if the Vitamin C manufacturer had not followed a particular instruction?

A Yes, they did have authority to do that.

Q And the companies knew that if they didn't follow the instructions of the Chamber the Chamber had the power to restrict or limit quotas?

A The Chamber did have that authority.

Q And the Vitamin C manufacturers were well aware that the Chamber had the authority to penalize the Vitamin C manufactures if the Chamber decided they were going to do that?

MR. ISAACSON: Objection; foundation.

THE COURT: Sustained.

MR. MASON: I am not understanding the objection, Your Honor. Limit.

THE COURT: Let's go to the side bar.

MR. MASON: Well, I don't want to mean to prolong it. I will do it again. I just want to know --

THE COURT: Let's go to the side bar.

[418](The following took place at side-bar).

MR. MASON: I am sorry, Judge.

THE COURT: There are two problems with the question. Number one, you are asking for broad conclusions about what the Ministry might do and you have not shown that he knows what the Ministry might do. The second objection to the last question in particular was that you said and here's what to be called a manufacturer and you have not show if he knows what the other manufacturers --

MR. MASON: Thank you.

(End of side-bar)

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[555]EXAMINATION CONTINUES

BY MR. ISAACSON:

Q All right. If I can -- we can put on the screen and there is a reference to a price in the third -- actually, in the third paragraph, sir. If you can look at that? At the bottom there is a reference to 2.80 to 2.90 US dollars.

It says, even though the chamber has adopted --

A I see it.

Q All right. It says: Even though the chamber has adopted the measure of preverification signature and stamp to limit the price, each company is still selling actively at $2.80 and $2.90 US dollars.

Do you see that?

The first paragraph refers to providing quotes for 3.35 or above.

Do you see that?

A I see them.

Q All right. Does that assist your memory, that the companies were able to sell vitamin C for less than the verification and chop price of 3.35?

A Now I recall that during that period of time, because the high and lows of the pricing, such situations did occur.

Q Let me show you some of your contracts. I will approach you with 426 A, which is a stack of contracts. I am not going to ask you to look at all of them.

[556]These are vitamin C contracts of Hebei Welcome.

MR. ISAACSON: I move to admit Exhibit 426 A.

MR. MASON: One second, Your Honor.

(Pause.)

MR. MASON: Your Honor, this is a whole stack. May we approach?

THE COURT: You have seen the stack, have you not?

MR. MASON: We have seen it before.

THE COURT: But you want to approach?

MR. MASON: Yes.

THE COURT: Let's approach.

[557] (Side bar.)

MR. MASON: Your Honor, these are, as you can see, a whole bunch of documents. Some of these are outside the relevant period. A lot of them contain arbitration --

THE COURT: They are post the class period?

MR. MASON: Yes.

A lot of them contain arbitration -- I don't know what he is going to do with them. I don't know what -- I don't know what the relevancy of this is. Is he going to go through every one of these documents?

THE COURT: He says no, thank God.

What are you going to use them for?

MR. ISAACSON: I am going to point out several -- they are all contracts with prices less than 3.35. I am going to show him several of them quickly. I will proceed with the line of questioning I am on.

THE COURT: Okay. What's wrong with what?

MR. MASON: Nothing.

THE COURT: Okay.

[558](In open court.)

MR. ISAACSON: I move to admit 426.

MR. MASON: Well --

THE COURT: You just said it's okay.

MR. MASON: To question him. Not to -- he said he was going to -- could I say --

THE COURT: The documents are admitted.

(Marked.)

Let's continue.

If you have an objection to a particular use of them, you will let me know.

EXAMINATION CONTINUES

BY MR. ISAACSON:

Q So the first contract, I just want to show you some things. I realize there is a lot of English here so I can't ask you about everything.

The first contract, and hopefully the translator can help you, there is a column for unit price. You can see, it's a unit price for $2.95.

A I see it.

Q Right.

Just for your information, this is a shipment to New York and there is a reference Welcome's New York warehouse.

Do you know what Welcome's New York warehouse was?

[559]A I do not know.

Q All right. Sir, I am just going to point out some prices to you so you can see contracts that were below $3.35.

So if you turn to the next page, do you see that the price is $3.10 per kilogram?

A I see it.

Q All right. Next two pages are kind of hard to read so if we go to the page 4761 at the bottom. This is a shipment to Los Angeles.

Do you see the price there is $2.75.

A I see it.

Q On the next page, this is another New York shipment to Welcome's New York warehouse, $2.95.

A I see it.

Q Sir, we have put together this package of contracts with prices less than $3.35.

How did you get a chop on these contracts?

A I don't know how --

MR. CRITCHLOW: Objection. Objection.

THE COURT: Sorry? Is there an objection?

MR. CRITCHLOW: Yes.

A That was handled by the sales manager.

THE COURT: What's the objection?

Withdrawn?

MR. CRITCHLOW: I'm sorry?

[560]THE COURT: Is it withdrawn or do you need to be

heard?

MR. CRITCHLOW: May I approach?

THE COURT: Sure.

MR. CRITCHLOW: My objection quite simply is, I asked how did you get a chop. There is no testimony there was a chop.

THE COURT: I think that's the point of his question. There is nothing wrong with the question. You may have cross-examination. You can say, do you see a chop on this contract. That would be fine.

There is nothing wrong with the question.

It is overruled.

MR. CRITCHLOW: Thank you, Your Honor.

[561](In open court)

EXAMINATION CONTINUES

BY MR. ISAACSON:

Q How did you get a chop that would permit you to make these shipments of vitamin C to the United States, sir?

A That was not a matter handled by the board chairman. It was handled by the sales manager.

Q So you don't actually know whether you obtained chop approvals for your shipments to the United States?

A I only know that at the time the market competition was very fierce. The price was very low. I know that there was a lot of inventory in the warehouse of the company.

Q If your company wanted to show that it had chop approvals for the shipments to the United States, it could show those to us, right?

A I don't know. As the chairman, they are not going to report to me on a daily basis about that.

MR. ISAACSON: I don't have any further questions.

THE COURT: All right. Cross-examination.

MR. PRESCOTT: Thank you.

[562]CROSS-EXAMINATION

BY MR. PRESCOTT:

Q Mr. Huang, you will be happy to hear that I have only two questions.

During the years 2001 to 2006, approximately what proportion of Hebei Welcome's production was for export sales?

A For what I remember in our enterprise, we rely mainly on exports. From what I recall, each year our export quantity will reach between 70 to 80 percent.

Q Between 70 to 80 percent of your output was for the export markets, sir?

A Exports.

Q And that's your exports of vitamin C from China, correct?

THE INTERPRETER: Say again.

Q That is referring to your exports of vitamin C from China, correct?

A Correct. It is for the VC item.

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EXCERPTS OF THE DIRECT EXAMINATION OF ZHENYING FENG OF WEISHENG PHARMACEUTICAL CO. LTD., FEBRUARY 28 AND MARCH 4, 2013

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[609]The chamber, the chamber of commerce of medicine and health products. Now, as I understand it, you're not sure whether the chamber is registered in China as a nongovernmental organization?

A Right. I know that the chamber was an organization within the Ministry of Commerce.

MR. ISAACSON: Move to strike, foundation.

THE COURT: I don't know about foundation. Nonresponsive, I sustain that.

[610]Q My question is: You are not sure whether the chamber is registered in China as a nongovernmental organization; is that right?

A I don't know exactly how they registered themselves, but I just know the upline organization was Ministry of Commerce.

MR. ISAACSON: Okay. Move to strike the latter portion of the answer after "but I just know."

THE COURT: Well, that, I'm not so sure. I'll overrule that.

Q You are not sure whether you have ever heard that the chamber is a nongovernmental organization; right?

A We always consider it as a government organization.

Q You're not sure if you've ever heard that the chamber was registered as a nongovernmental organization in China; correct?

A Right. Because the leaders of the chamber were all designated by Ministry of Commerce.

MR. ISAACSON: Move to strike as nonresponsive.

THE COURT: Granted.

Sir, you need to answer just his question.

Q Have you ever heard -- you're not sure whether you've ever heard that the chamber was registered as a nongovernmental organization in China; correct?

A Right.

Q Now, when you were general manager of Weisheng in 2001, [611]do you remember there was a price war for Vitamin C going on?

A You have a time period?

Q 2001, continuing to almost the end of the year.

A Yes.

Q And if I can ask you to look at Exhibit 21. Exhibit 21, this is a report that you wrote in June 4, 2002 or thereabouts, with a 2001 work summary and 2002 work plans; is that right?

A I did not write this.

Q Okay. I've misunderstood.

MR. ISAACSON: I move to admit it.

MR. MASON: No objection.

THE COURT: It's admitted.

(So marked.)

Q If you put up the first page, it lists you as a sponsor. Tell me what that means.

A What does it mean in Chinese? That is like a proposal that was reported to Weisheng board by Weisheng Pharmaceutical.

Q Why is your name on the document?

A Because as the general manager, I reported to the board.

Q So, you provided this report to the board?

A Correct. But it was written by the secretary.

Q But you were responsible for presenting it to the board?

A Yes.

[612]Q And the first sentence of the report was that "In 2001, the Vitamin C market saw brutally sharp competition, slacked performance, and a sustained price decline"? That was the first sentence; right?

A Yes.

Q The price decline of Vitamin C was a great concern to Weisheng in 2001; right?

A Yes.

Q There was brutally sharp competition going on in 2001? There was brutally sharp competition going on in 2001; right?

A Yes.

[613]BY MR. ISAACSON:

Q And during that period, there was, the Chamber existed?

A It existed.

Q Yes. The Ministry of Commerce existed?

A I don't not recall at that time whether it was MOFCOM or MOFTEC.

Q Whatever its name, you had a Ministry of Commerce in 2001, is that right?

A It may have been called MOFTEC at that time.

Q The vitamin C committee existed during this 2001 price war, right?

A Yes.

Q New, if I can ask you to look at Exhibit 134, this was previously admitted and this is a document with two annexes. The first annex on the page are minutes of meetings. Please look at the meetings of meeting that begin on November 16, 2001. Annex one, Minutes of Meeting.

Do you see that? See the minutes?

(Exhibit published.)

A I see.

Q All right. And it says there was a meeting on November 16, 2001 that the Chamber held in Beijing with the heads of vitamin C manufacturers. Do you see that?

And do you see you're listed as attending the meeting?

[614]A Yes.

Q Do you recall the meeting, sir?

A I do.

Q And in the minutes, in the second paragraph, do you see where it says, after a couple of sentences: Therefore, the participants of the meeting, and it references their discussions, that they have reached an agreement aimed at enhancing the self-discipline of the industry. They have concluded that Chinese vitamin C manufacturers are absolutely capable of realizing the self-discipline of the industry.

Those are true statements, aren't they, sir?

That's what happened at the meeting?

A They, they mentioned that industry self-discipline under the instructions from the Chamber.

Q Well, we'll have to look for the instructions of the Chamber, but just to be clear, these minutes as you'll see on page one were distributed by the Chamber, weren't they, at page one of the document?

And you talk about instructions, sir, but after it talks about how the manufacturers are absolutely capable of realizing the self-discipline of the industry, it also goes on to say that after, it is relatively easy to reach unison within the industry, under the item, Secondly. Do you see that?

That was a true statement by the Chamber, wasn't it?

[615]A That was what was said by the Chamber under Mr. Qiao's instructions, that it is easily reached.

Q All right. The document is truthful when it says it was relatively easy to reach unison within the industry, right?

A That's what Mister -- that's what Mr. Qiao stressed, that a unison must be reached, so he thought that it would be relatively easy.

Q And it turned out to be relatively easy, didn't it?

A Yes.

Q In fact, as it says in the next paragraph, the minutes reflect that by way of hand voting, the resolution to restrict export volume and protecting price was passed unanimously?

Those minutes were correct, right, sir?

A In every meeting, each person expressed his views and then a decision would be made by Mr. Qiao from the Chamber.

MR. ISAACSON: Move to strike as nonresponsive.

THE COURT: Granted.

Q Sir. My question was the minutes are correct that the resolution was passed unanimously, correct?

A Under the instructions of Mr. Qiao, unanimously passed, correct.

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[640]Q Let's see if this helps you. Turn to Exhibit 50 in your binder. Exhibit 50 are minutes by Wang Qi of JJCP of a meeting on November 3rd, 2002, in Beijing the record that you attended.

A Yes.

Q And item 2, you will see that there is discussion of quantity issues. Do you see that?

A I see.

Q In the middle of that, there is a paragraph discussing the adjustments decline. Do you see that? Yes, we can put it on the screen. It was previously admitted. So go to the next page, the paragraph in the middle about adjustment. Do you see the discussion of adjustment?

A I see it.

Q All right. And there is a discussion of an extra quota for the year and Wang Qi records, "We are asked to tell outsiders that the total production in 2002 is no more than 40,000 tons. But the total production is actually going to be 43,000 tons." You recall this discussion taking place at [641]this meeting, don't you, sir?

A The final figure of 40,000 tons was decided by Qiao, Mr. Qiao, Q-I-A-O.

MR. ISAACSON: Objection; move to strike.

THE COURT: I'm going to grant the motion. I'm going to ask the witness again, please answer the question that's been asked.

BY MR. ISAACSON:

Q All right. My question, sir, you recall this discussion at the meeting, don't you?

A I do.

Q If I can ask you to look to turn to tab 51, the next tab, Exhibit 51 previously admitted. This is another meeting

minutes drafted by Wang Qi. It's for a meeting dated February 24, 2003, and it records that you attended.

Do you see that, sir?

A Correct.

Q And this meeting was at the Rainbow Hotel in Shanghai.

Do you recall going to meetings at the Rainbow Hotel in Shanghai?

A I did participate in the meeting, I just don't recall where.

Q You don't remember the Rainbow Hotel in Shanghai?

A There are many venues for meetings, so exactly where it was, I don't have a recollection.

[642]Q Do you see at the top, it talks about the basic key points of the meeting?

A I see it.

Q Item 1A, "Keep the verification a shop requirement, but oppose no volume limit." Do you see that?

A I see.

Q It was decided at that meeting the verification and chop would continue, but there would be no limits on volume of vitamin C, right?

A Yes.

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[652]MR. ISAACSON: I move to admit Exhibit 66.

THE COURT: That's received.

(Plaintiff Exhibit 66 was admitted into evidence.)

BY MR. ISAACSON:

Q If I can ask you to turn to, in the Chinese, the -- there is a section at the bottom of page 2 that begins, "Paid attention to market status analysis and improved coordination in the industry." That's on top of page 3 in the English. Do you see that title?

A I see it.

Q And there are 3 paragraphs, numbered paragraphs under that. I want to ask you to look at number 3. All right. And that paragraph reports, "Fully exerted our company's function as the Rotating Chairman of the VC chapter of the Chamber of Commerce of medical health products proactively organized and participated in the coordinating meetings of the CV chapter of the Chamber of Commerce and medical health products. It says, "We organized a large producers to coordinate and adjust industry strategies, enhance our work in regards to the strengthening of the health regulation in the industry and stabilization of the market price and the guiding the market to develop in a normal way." Those were [653]true statements, weren't they sir?

A Not totally accurate because the person who wrote this document was not totally familiar with the situations.

Q Well, your assistant also attended vitamin C subcommittee meetings, Mr. Wong, right?

A Yes.

Q He attended many of the meetings with you, right?

A Yes.

Q And in his report or in the report of his department, he says that we, that is Weisheng, organized the large producers to coordinate and adjust industry strategies; is that right?

A I didn't. He didn't have the capabilities. I think he was exaggerating his capacities.

Q This was another false report by your company; is that right, sir?

A He exaggerated the function of his department.

Q You say he exaggerated. Was this a false report by your company by the International Business Department?

A Correct. If you say it like that, it is incorrect.

Q What about the very last sentence of that report, "Nevertheless, we need to find out the shortcomings we had and correct them to prepare us to fight the upcoming competition in the international market." Do you see the very last sentence?

[654]A I don't think that has any problem.

Q Sir, even though you're telling us that the Chamber was telling you what to do, you were preparing for competition with the other companies, weren't you?

A Yes, it's the competition within the industry.

Q Sir, can I ask you to look at Exhibit 141. We just finished looking at a document from October of 2004. Now we're looking at one from January of 2005. Do you have 141 in front of you?

A 141, yes.

Q Now this is reflected as a speech by Mr. Kong Tai in January of 2005. He's from JJPC. You know him, right?

A I do.

Q I move to admit Exhibit 141?

MR. MASON: Objection.

THE COURT: Yeah, that's received over objection.

(Plaintiff Exhibit 141 was admitted into evidence.)

BY MR. ISAACSON:

Q I want to ask you about a statement in the speech. That statement is on page 9 of the Chinese and of the English. Mr. Kong Tai was the president of JJPC right?

A Yes.

Q You knew him as the top official of JJPC at your meetings?

[655]A I knew him as the general manager, the rest of his organization, I'm not sure.

Q You knew he -- in terms of who you saw at meetings, he was the highest official at JJPC that you met, right?

A Yes, I think he was. He was.

Q And he attended Summit meetings?

A Correct.

Q Now, on page 9, do you see how he discusses that there has been expansion by the vitamin C manufacturers, page 9 at the very top?

A Yeah.

Q All right. And then after the discussion of expansion and the next, I think it's the third sentence, "These VC enterprises mediated by the Chamber of Commerce," do you see that? "Took measures last year to limit production to protect price. And to ensure a soft landing of the price plunge. But in the long run, special allegiance is vulnerable and will easily succumb to the temptation of profit and before the test of time."

A Yes.

Q Did you agree with Mr. Kong in July of 2005, that the allegiance to the companies to their agreements were vulnerable and there was concern that they would succumb to the temptation of profit?

A This is a speech expressed by Kong Tai. I had no [656]communication with respect to what he said. I don't know what he meant by that.

Q Do you agree with what he said there?

A I cannot really consider that issue right now.

Q All right. Let me ask you about the statement by another company. Exhibit 42, sir, please. Exhibit 42 is a report -- 42. Do you have Exhibit 42? This is a report provided to us by Northeast Pharmaceutical Group, sir, NEPG. I move to admit Exhibit 42.

MR. MASON: Objection, your Honor.

THE COURT: All right. Received over objection.

(Plaintiff Exhibit 42 was admitted into evidence.)

BY MR. ISAACSON:

Q And I want to ask you about a statement there? If you turn to page 8 on the Chinese, which is also on page 8 of the English. There is an item 6. "Strengthen self-regulation in the VC industry, but don't rely completely on the gentleman's agreements of the Chamber of Commerce." That's a term that you're familiar with, isn't it, sir, that your agreements with other companies were gentleman's agreements that sometimes you honored and sometimes you didn't?

A I'm not certain about what NEPG meant by that phrase, but as to industry self-discipline, we must abide by that.

Q All right. You heard of your self-discipline [657]agreements referred to as gentleman's agreements before, haven't you?

A I have not heard -- what they meant by gentleman's agreements in China, it just means an agreement and whatever as to the industry self-discipline, that was what was said by the Chamber.

Q You were familiar with concerns at your company and expressed by other companies that the agreements would not be honored, right?

A The gentleman's agreements meant if the Chamber said that, you must abide, that you must abide. If they meant that you don't need to abide by it, then we didn't need to abide by it.

Q Are you saying the Chamber sometimes told you there were agreements that you didn't have to abide by?

A Correct. Sometimes the Chamber did not require to reach an agreement.

Q And do you -- are you aware of any written records at your company that explain when the Chamber required you to enter an agreement as opposed to not requiring you to enter an agreement?

A There's no such record, but within the Chamber they must have. And once the agreement is reached, they said you must abide by it and if there was no such agreement reached by the Chamber, then we don't have to abide.

[658]Q So there were situations where there were agreements that you did not have to abide by?

A Correct.

Q And you have no written record of what agreements you were supposed to abide by?

A No it's only in according to the contents of the meeting. If they -- they wanted to fix it, then they fix it. If they didn't need to fix it, they didn't.

Q All right. Well, we asked you to look at -- no, I'm sorry. Have you seen a single document of your company that says there was an agreement on price or volume that you were required to abide by?

A That I don't remember clearly.

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Q Exhibit 59. This is a document -- minutes of a general -- of a meeting of the general manager's office, right?

A Yes.

[659]MR. ISAACSON: I move to admit Exhibit 59.

MR. MASON: No objection.

THE COURT: All right that's received.

(Plaintiff Exhibit 59 was admitted into evidence.)

BY MR. ISAACSON:

Q This is a meeting you hosted in November of 2005?

A Correct.

Q All right. And at page 3, it records that you provided a briefing about a Chamber meeting. And in item 2, what you reported was the major Chinese vitamin C manufacturers are all planning to organize production suspension around March of 2006, to curb production output. That was the report that you made, right, sir?

A I think the Chamber did decide to organize a stoppage of production in March.

Q But all that's recorded that you reported were the plans of the manufacturers, right?

A Correct.

Q Is this another false document, sir?

A It's not that it's -- it's not that it was false, but we cannot possibly put down that it was decided by the Chamber on every occasion. But the fact is that was – the stoppage of production was designated by the Chamber.

Q In fact, you didn't put down on any occasion that it was decided by the Chamber, right?

[660]A Didn't I say earlier. In the earlier sentence I read about a CCMHPI coordination meeting?

Q Right. All you did was mention there was a Chamber meeting, right?

A And the contents of the meeting was to instruct the manufacturers to stop production in March.

Q That's not what the document says sir. Was the document false?

MR. MASON: Your Honor.

THE COURT: No, overruled. Overruled.

THE WITNESS: It's correct because it's under what was briefed about the Chamber number one concerns the sales, number two concerns the limitations of production.

Q So the document was correct. Thank you, sir.

A Correct.

Q Thank --

A Because I breathed and conveyed what was said at the Chambers Coordination Meeting.

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[661]BY MR. ISAACSON:

Q Exhibit 260 is a report provided to us by Weisheng. Counsel, I have English 260 and Chinese in 259.

MR. MASON: Try looking at the back of the English of 260. I want English. Oh, okay. Okay.

MR. ISAACSON: There you will see Chinese. I move to admit Exhibit 260.

MR. MASON: I know I have an objection to it.

MR. ISAACSON: It's a Weisheng report.

THE COURT: What was the objection?

MR. MASON: Well, it can go in, your Honor.

THE COURT: All right. Received.

(Plaintiff Exhibit 260 was admitted into evidence.)

BY MR. ISAACSON:

Q All right. In the first paragraph, do you see in the middle there is a reference to how the price for vitamin C had stabilized at around $3 -- actually the price of $3 per kilogram.

A Yeah, I see it.

Q All right. You are aware that there were times when Weisheng was selling vitamin C in the United States for less than the minimum price of $3.35, right, sir?

A I do.

[662] Q And you were doing that -- when you sold vitamin C into the United States for less than $3.35, were you doing that after getting your contracts chopped?

A Because by that time $3.35 was not the market price already. And the enterprise was facing difficulties. We would not be able to export in accordance with that price. But if we do not go with that price, the Chamber will not give us the chop. The enterprises were in a hot place.

Q Sir, my question was: When you sold vitamin C into the United States below the minimum price of $3.35, did you get your contracts chopped or approved by the Chamber?

A It happened very rarely with Weisheng, but it did happen. It was signed another contract which is lower than 3.35.

Q So did you sell into the United States with contracts that were not chopped?

A When they exported in customs, is all chopped as 3.35. But the contract implemented with the customer was lower than 3.35.

Q Are you --

A But what was written with the customs was always 3.35.

Q Are you saying that when you wanted to sell below 3.35, you could submit false documents to the Chamber and to customs.

A Yeah, I gave them the 3.35 document. He would not [663]lower than that, they would not have given us the chop.

Q My question, sir, is were you able to give customs and the Chamber false documents in order to sell vitamin C at prices below $3.35?

A Yes.

Q All right. Your company is still selling to customers in the United States, vitamin C, correct?

A We were still selling VC to the United States.

MR. ISAACSON: I have no further questions.

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EXCERPTS OF THE CROSS EXAMINATION OF ZHENYING FENG OF WEISHENG PHARMACEUTICAL CO. LTD., MARCH 4, 2013

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[680]Q Sir, you were asked many questions by counsel for plaintiffs about meetings with vitamin C subcommittees. Do you recall those questions?

A Some I do. Some I don't.

Q Okay. Fair enough. And do you recall you were asked questions about authority of vitamin C subcommittee with regard to members of the vitamin C subcommittee. Do you [681]recall that topic?

A Authorities of the subcommittee there. I do.

Q Okay. At the meetings that you attended for the vitamin C subcommittee, was Mr. Qiao Haili, the representative of the Chamber and the subcommittee, at the meetings on behalf of the Chamber and the subcommittee. Let me rephrase it. Is it not the case that Mr. Qiao Haili was a representative the Chamber and the vitamin C subcommittees at the vitamin C subcommittees that you attended?

MR. ISAACSON: Objection; compound.

THE COURT: Yeah. Rephrase the question, please.

BY MR. MASON:

Q Was Mr. Qiao Haili, the representative of the vitamin C subcommittee, at the meetings that you attended of the vitamin C subcommittee?

A He was the head of the western medicine department for the Chamber, but also a the -- he was -- he was like secretary and director of the VC subcommittee.

Q When you attend the VC subcommittee meetings, Mr. Qiao was at the meetings?

A Yes, he was present every time.

Q Do you recall receiving instructions from Mr. Qiao on behalf of the Chamber about the concept of industry coordination?

A He did.

[682]Q And what instructions did Mr. Qiao Haili give you with respect to industry coordination involving vitamin C?

A Yes.

Q Yes? What instructions did he give you?

A Regarding VC, coordination the instruction he gave us were to allocate quantity to determine the minimum price stoppage of production or reduce production and puts inventory in the Shanghai warehouse.

Q Were all these matters directives that you received from Mr. Qiao?

MR. ISAACSON: Objection; leading.

THE COURT: No. I'm going to let him lead.

THE WITNESS: Yes.

MR. MASON:

Q In fact the process that was involved at the vitamin C subcommittee was in your view a mandatory process that the vitamin C companies were required to engage in?

A Right. For meetings, Mr. Qiao notified us for a to convene a meeting. He designated the gender and the content of the meetings. He directed the VC enterprises for discussions and he would make -- eventually he would make the decisions for the meetings.

Q Okay. So he made decisions with regard to minimum price that vitamin C subcommittee members could charge?

A Yes.

[683]Q And Mr. Qiao gave directions as to the quotas or the allocation of products that the vitamin C subcommittee members could have?

A Yes.

Q And he gave you instructions with regard on occasion to being directed to stop production of vitamin C?

A Yes.

Q And on occasion he gave you directions with regard to having to put certain vitamin C inventory in a warehouse?

A Yes.

Q And he told you that if his directions were not followed, then the government would impose penalties on the companies who did not follow his direction?

A Yes.

Q And those penalties included a refusal to allow the vitamin C subcommittees to export product?

A Yes.

Q And these policies were in effect, as far as you know, at least from 2001 when you first attended a vitamin C subcommittee?

A Yes.

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[688]Q Are you familiar with the term self-discipline, sir?

A Yes.

Q And what is self-discipline as applied to the vitamin C industry in China?

A Self-discipline within the industry in China means that [689]these VC manufacturers must follow the instructions from the Chamber regarding VC importation for the sake of the entire health of the entire VC industry.

Q And in connection with self-discipline, did you receive instructions from Mr. Qiao that you needed to have minimum export prices?

A I did.

Q And did you receive instructions from Mr. Qiao that Weisheng would be limited as to how much vitamin C could be export by Weisheng?

A Yes, both the export quantity and the export pricing.

Q And you were present at meetings, were you not, sir, where Mr. Qiao gave these instructions not only to Weisheng, but to all the vitamin C manufacturers?

A Correct.

Q Did Weisheng and the other vitamin C manufacturers have the ability to ignore the requirements of self-discipline?

A We must abide by it.

THE COURT: Mr. Mason, about how much more do you have?

MR. MASON: Sometime, your Honor, so.

THE COURT: All right. Let's take a break for lunch, ladies and gentlemen. We'll come back here at 2:10. Please don't talk about the case amongst yourselves or anyone else. Have a nice lunch.

[690](Jury is out of the courtroom at 1:04 p.m.)

THE COURT: All right. 2:10, see you then.

(Recessed and recalled.)

[691]THE COURT: Have a seat for just a minute before we bring in the jury.

Mr. Mason, I wanted to give you notice that I'm going to apply some restrictions to your continuing use of leading questions. When I look back over the testimony, you were really testifying. The witness was just saying shih dr, which means yes. And, you know, the Rule 611 and the advisory comments suggest that I need not allow full leading questions or unbridled leading questions when you're cross-examining your own witness.

I'm going to allow you some leeway both because we've done it so far and because we have the same translation difficulties that we have throughout the case. But I wanted you to be on notice that if it continues to be this lawyer makes a statement and the witness says yes, then I'm probably going to cut it off at some point.

MR. MASON: Thank you, sir. So I can do a little of it but not too much?

THE COURT: Yes. And we'll find out. No doubt Mr. Isaacson will object when he thinks it's gone too far, and I'll decide.

(The jury entered at 2:14 p.m.)

THE COURT: Be seated, please.

Mr. Mason, you may continue.

MR. MASON: Thank you, Your Honor.

[692]CROSS-EXAMINATION

BY MR. MASON:

Q Mr. Feng, when Mr. Qiao spoke at Vitamin C subcommittee meetings, did he speak with the authority -- I'll start again.

Mr. Feng, when Mr. Qiao spoke at Vitamin C subcommittee meetings, did he speak with the authority of the Chinese government?

MR. ISAACSON: Objection.

THE COURT: Sustained. And for the reason we just discussed.

BY MR. MASON:

Q When Mr. Qiao spoke at Vitamin C subcommittee meetings, based upon the years that you attended Vitamin C subcommittee meetings and your familiarity with the procedures at the Vitamin C subcommittee meetings, did you understand that Mr. Qiao spoke with the authority of the government?

MR. ISAACSON: Same objection.

THE COURT: Sustained.

BY MR. MASON:

Q Whose authority did Mr. Qiao speak on behalf of at Vitamin C subcommittee meetings?

MR. ISAACSON: Objection.

THE COURT: Sustained.

[693]Do you need a side bar?

MR. MASON: Yes, sir.

(Sidebar begins.)

[694]THE COURT: I might or might not have sustained the first two as leading, but the reason I sustained the objection to all three of the questions is because they call for a conclusion.

MR. MASON: So can I ask them did Mr. Qiao tell you who he was speaking on behalf of?

THE COURT: You can ask him what -- well, I don't want to give you legal advice, but you can eliminate both the conclusion and the leading question nature if you say to him what did Mr. Qiao tell you, if anything, about his authority.

(Sidebar ends.)

[695]BY MR. MASON:

Q Sir, what did Mr. Qiao tell you, if anything, about his authority?

A In the name -- he told me that he was speaking on behalf of the government.

MR. ISAACSON: Your Honor, request the instruction that you gave earlier.

THE COURT: The same limiting instruction, ladies and gentlemen. That doesn't mean that you should take it as true that Mr. Qiao was speaking for the government. The evidence is offered for you only so that you understand that this witness alleges that he heard Mr. Qiao making that statement.

BY MR. MASON:

Q Sir, I'd like to direct your attention to Exhibit 50, which counsel asked you about this morning.

Do you have that in front of you, sir?

A I see it.

Q If you look at the second page, there's that reference to, and I'm paraphrasing, being asked to tell outsiders about total production being no more than 40,000 pounds in 2002.

A Yeah.

Q Do you see that, sir?

[696]A Yes.

Q Who was the person who asked companies to tell outsiders that statement?

A Was Qiao Haili, Q-i-a-o H-a-i-l-i, who announced to the outsiders.

Q Who what?

A Who announced to the outside world.

Q Thank you.

Sir, do you recall you were shown various documents by counsel this morning and asked whether the documents were false or misleading because to the extent there was reference to an agreement involving Vitamin C companies at the Vitamin C subcommittee meetings, according to counsel, it was misleading because it did not say that the agreement was compelled as a result of what Mr. Qiao might have said?

MR. ISAACSON: Objection.

THE COURT: Sustained.

BY MR. MASON:

Q Do you recall, Mr. Feng, that you were asked about whether the documents that referenced these agreements were false or misleading? Do you recall that testimony?

A Yes.

Q Were you aware that at these meetings, Mr. Qiao had made directions concerning these agreements?

[697]A The views that were expressed by Mr. Qiao?

Q Yes.

A Yes.

Q And did you understand that even though it was not in writing, that Mr. Qiao had made those comments and directions?

A Because every meeting was under his instructions.

Q You were asked some questions, sir, with regard to the rotating chairmanship of the Vitamin C subcommittee. Do you recall those questions?

A I remember.

Q And with respect to the rotating chairmanship and that title, were members of the Vitamin C subcommittee ones who had that title from time to time?

A The rotational chairman is a virtual post --

Q I'm sorry.

A -- and it was taken over by the manufacturers by rotation. Mainly, he was responsible for the expenses of the meeting. And other arrangements did not really have any actual authority.

THE COURT: Did you mean virtual post or ceremonial post?

THE INTERPRETER: He said virtual.

THE COURT: Virtual?

THE INTERPRETER: Yeah.

[698]BY MR. MASON:

Q But did you mean -- I don't know.

THE COURT: It's a translation issue. Go ahead and try to clarify it. I don't know what a virtual post is.

BY MR. MASON

Q Did you mean, Mr. Feng, ceremonial post in describing the duties of the rotating chairman?

A Administrative.

Q Sir, I want to ask you about the verification and chop procedure. Do you recall, sir, that that was instituted by the chamber about 2002?

A Yes.

Q Do you recall how the verification and chop procedure was implemented?

A The chop verification, chop process includes the enterprise contract and application form. We send the form to the chamber. After the chamber put a chop on it, and then the Chinese customs will release the merchandise according to the chop.

Q And what information does the chamber review in deciding whether or not to affix the chop?

MR. ISAACSON: Objection.

THE COURT: Sustained as to form. What does he submit.

BY MR. MASON

[699]Q What information is submitted by the manufacturers to the chamber on the verification of the chop form?

A Quantity, pricing. And then the chamber put the chop on it.

Q What does the chamber have to verify before the chop is placed on the document?

A Whether it complies with the minimum -- complies with the requirement of the quantity as well as the minimum pricing requirement.

Q Is that the requirement imposed by Mr. Qiao?

MR. ISAACSON: Objection, leading.

THE COURT: I'll allow it.

A The instructions of the chamber, yes.

Q Okay.

By the way, with regard to the quantity, were instructions given with respect to the quantity to the companies?

A There's a fixed quantity that is split up into the different companies; and if you exceed that quantity, then he will not get the chop.

Q Who decides what the quantity should be?

A And it was by the chamber, but it was -- it evolved from the ministry of commerce export quota into this verification and chop process.

Q Were the companies allocated certain quotas or [700] quantities?

A Yes.

Q Did the quotas that Weisheng received while you were general manager, did you consider them to be satisfactory?

A Not satisfactory.

Q Why?

A Because whatever quota they assigned to us came to about 50 to 60 percent of our production capabilities.

Q So during the time that you were the general manager of Weisheng, what was the production capability of the Weisheng line?

A The production capacities depended on the periods. Before 2003, it was 15,000 tons. After 2004, it became 30,000 tons.

Q And the quotas that you were given by the chamber, how did they compare with your production capacity?

A It was reduced to about 50 to 60 percent of the capacity.

Q Why didn't Weisheng object to that quota?

A I -- my objection was useless because it was government instructives. Useless.

Q Okay.

MR. ISAACSON: Objection. Move to strike the latter comment.

MR. MASON: No, Your Honor. I asked him why.

[701]THE COURT: The motion is denied.

MR. MASON: Thank you.

BY MR. MASON:

Q Sir, with respect to the price you mentioned, during periods of verification and chop, were there price minimums that were established by the chamber?

A The chamber designated a minimum price.

Q Now, you testified this morning, sir, about -- I think you used the term there were two contracts sometimes. Do you recall that testimony?

A I remember.

Q And could you go over the circumstances that existed with respect to the occasions when Weisheng would have used two contracts?

A It depends on the supply and demand of the market. When there is a big fluctuation, then the pricing designated by the chamber did not comply -- did not -- was not consistent with the market price. Under those circumstances, then that price could not be implemented.

Q Are you familiar with SARS?

A My recollection of SARS was at the end -- between the end of '02 and the beginning of '03. At that time, SARS happened in China. And the public became alarmed. Because VC was able to increase the --

Q Immunity?

[702]A -- immune system, so the Chinese government -- I mean the Chinese people were eager to get them.

Q And did that -- did the SARS event have an impact on price?

A Because of SARS influence, the price of -- the price of VC started to soar highly, speedily actually. But after SARS was over, then the pricing of VC started to slide.

Q And was it about this time when Weisheng used two contracts on occasion?

A Yes, because the pricing was sliding. Then the market price became lower than the price designated by the chamber. Under those circumstances, since the pricing was lower, the situations of the two contracts existed.

Q Did Weisheng tell Mr. Qiao that there were these two contracts?

A No.

Q Why?

A Because had we told him, then he would have deducted our export amount.

Q And are you familiar with the concept of foreign exchange in China?

A Yes.

Q Do you know what a foreign exchange certificate is?

A Yeah. The regulation was that the foreign currency that we receive must be consistent with the amount on the [703] contract. If the foreign currency amount was different from the contract amount, then the exchange could not be implemented into RMB.

Q What impact would that have on Weisheng if the exchange couldn't be implemented?

A Then whatever money was received could not be deposited into Weisheng's account.

Q Did Mr. Qiao have the ability to satisfy the foreign exchange requirements?

A He does not have the authority.

Q Okay.

So what would happen -- did Mr. Qiao ever discover that there were these two contracts on occasion?

A He did not.

Q Okay.

And were efforts made to hide it from Mr. Qiao? Were efforts made to hide this from Mr. Qiao?

A Just did not report to him.

Q You didn't tell Mr. Qiao?

A Right.

Q About how many occasions were there two contracts that Weisheng would have prepared?

A If we're talking about the period of time, the longest period was in '06. Because in '06, the pricing was lower than the designated price.

[704]Q And can you quantify how many times there were two contracts?

A I don't remember clearly.

Q Okay.

Are you familiar with the term or with the epidemic called avian flu, bird flu?

A It was affected by that. At the end of '03 to the beginning of '04, there was avian flu, and people also -- because of the SARS situation, people started to panic about the situation, and then VC price started to rise again.

Q And at some point, did the avian flu epidemic or scare subside?

A Right.

Q And did that affect the price as well?

A Correct.

Q So we're clear, were there two sorts of epidemics, SARS, and then separately there was avian flu?

A Yes.

Q And both had an impact on the price rise?

A It did.

Q In your view, were those impacts significant to the price of Vitamin C?

A Yes.

Q Sir, you mentioned there was, at some point, a production shutdown directed by Mr. Qiao.

[705]A I did.

Q And do you recall the circumstances of the production shutdown as directed by Mr. Qiao?

A There was -- it happened after '03, after SARS, when the pricing of VC started to slide. And so the chamber convened a meeting. At the end of '03, the chamber gave the instructions that basically we need to set up a warehouse in Shanghai, and each company would deposit a certain amount of VC. Another decision was, and it was the middle -- towards the middle of 2004, that there would be a stoppage of production for maintenance.

Q Okay. Mr. Feng, let me direct your attention to the circumstances involving the stop of production first. Do you recall that Mr. Qiao gave instructions to the Vitamin C companies with regard to the stop of production?

A I remember.

Q Can you tell us what Mr. Qiao directed in connection with the stop of production?

A I remember that to be around May, June of 2004, that all the VC producing enterprises should stop production and do maintenance.

Q This is what you were told by Mr. Qiao?

A Yes.

Q And as general manager of Weisheng, were you happy with those instructions?

[706]A At the time, we objected.

Q And what did Mr. Qiao do about your objection?

A And yesterday, I was asked by the other side the same question about Weisheng. Weisheng had a new production line that they were going to test the machinery, but Mr. Qiao Haili requested us to stop everything. We insisted that we should continue with the testing of the new machinery production line.

Q And what did Mr. Qiao say?

A Because we did not did the stoppage, he actually stopped our verification and chop process. Because of his cancellation of the quota, we could not export any more material. So we were obliged to stop production in July.

Q Sir, you also mentioned depositing product, at Mr. Qiao's instruction, in the Shanghai warehouse.

A Yes.

Q Can you describe the circumstances of that?

A Because of the sliding of the market, of the pricing in the market at the time, in order to control the export quantity, Mr. Qiao instructed all the VC manufacturers to put a certain amount of VC into -- into the Shanghai warehouse --

Q And what happened?

A -- because he was afraid that the pricing would [707] continue to tumble. Through this, he was able to control the export amount.

Q Did Weisheng have a choice whether to comply with the instruction to put product in the Shanghai warehouse?

A Weisheng did not have any choice.

Q And what did Weisheng do?

A Eventually Weisheng was obliged to implement.

Q Did Mr. Qiao direct any cross-checking procedures in connection with the inventory that was put in the warehouse?

A One or two persons from each enterprise would be designated to go to the warehouse to do the verification examination, and then whatever results of the examination should be reported directly to Mr. Qiao.

Q And do you know why Mr. Qiao made this direction that there would have to be checking by the manufacturers about each other's inventory drop?

MR. ISAACSON: Objection.

THE COURT: Sustained.

BY MR. MASON:

Q Did Mr. Qiao tell you the purpose of the cross-check?

A Because he wanted to force the implementation of the -- of this -- of the directive. And anybody who refused to implement, that he's going to exercise a penalty, penalties.

Q Sir, do you recall that at some point in 2003, Mr. Qiao imposed a certain export minimum price that was higher than [708]335?

A From what I can recall, I think there was price of like $9.20, U.S. dollars.

Q And, sir, was that during the SARS period?

A After SARS passed, correct.

Q And what happened to the $9.20 price?

A Since the pricing kept on sliding and then the supply and demand of the market changed, the fact -- the truth of the matter is that market price was already below this price.

Q And so what did Mr. Qiao do with regard to the $9.20 price?

A Because nobody was able to export, within a very short period of time, he eliminated that minimum price again.

Q Do you recall about how long the $9.20 price remained in effect?

A About a month.

Q And then was it canceled by the chamber?

A Yes. They canceled the $9.20 price.

Q Did Mr. Qiao give any instructions to the Vitamin C companies about any obligation to discuss pricing of Vitamin C outside the Vitamin C meetings themselves?

A Mr. Qiao required the sales manager of each enterprise to constantly share the information of the market, and whatever they shared must be reported back to him.

[709]Q Okay.

MR. MASON: Could you please put Defendant's Exhibit 21 in front of the witness, please.

BY MR. MASON:

Q Have you seen this before, sir?

A I have seen this.

Q Do you recall when you received it?

A I don't remember having received it.

Q I'm sorry, I thought you said you saw it before.

THE COURT: When did you see it before?

A I don't remember when I saw this document, the time. I know the result of the document.

Q Okay.

MR. MASON: Your Honor, there's no objection to this. May it be received?

THE COURT: No objection, right?

MR. ISAACSON: No objection.

THE COURT: Received.

(Defendant Exhibit 21 was admitted into evidence.)

BY MR. MASON:

Q Sir, is this a document that was prepared, to your knowledge, by the Chamber of Commerce?

A Yes.

Q And it refers -- there's a date on it at the bottom of April 16th, 2001.

[710]Do you see that, sir?

A I see it.

Q Is this about the time you attended your first Vitamin C subcommittee meeting as general manager of Weisheng? Is that correct, sir?

A Yes.

Q Could I direct your attention to the second paragraph, starting with the second line that starts out "the coordinated export price for Vitamin C has been adjusted to more than CIF 3.20 U.S. dollars."

Do you see that, sir?

A I do.

Q And do you see at the last phrase starting "where the above-described exports in violation of the rules as been reported"? The third line from the bottom? Do you see that?

A Yeah, I see it.

Q And it says "where the above exports in violation

of the rules has been reported, once verified through investigations, recommendations shall be made for the Ministry of Foreign Trade and Economic Cooperation to reassign the violating enterprise's quotas to the reporting enterprise."

Do you see that, sir?

A I see.

[711]Q Is the Ministry of Foreign Trade and Economic Cooperation, that's MOFTEC?

A Yes.

Q And then there are copies identified to various agencies. Do you see in the Chinese there's a line that says CC, and it says copies of this to the Ministry of Foreign Trade and Economic Cooperation, which is MOFTEC, right?

A Yes.

Q Then it says Trade Administration, the Bureau of Quotas and License, Dalian Special Office.

And are those all Chinese government agencies, sir?

A Yes.

Q And then a copy of this was sent to the Tianjin Special Office. Is that a government agency?

A Yes.

Q And then to the Qingdao Special Office?

A Yes.

Q Is that a government agency?

A They're all government agencies.

Q So to cut this short -- if I can just lead this -- all of the recipients of a copy of these documents were agencies of the Chinese government, correct?

A Yes.

[712]Q And the copy, it says within the agency, that's chambers leaders, is that China Chamber of Commerce?

A Yes.

Q And the Western Medicine Division, that's what Mr. Qiao was directly working for?

A Correct.

Q Within the chamber?

A Correct.

MR. MASON: Could you put before him --

That's been admitted, correct, Your Honor?

BY MR. MASON:

Q Take a look, please, sir at Defendant's Exhibit 49.

A (Witness complies.)

Q Do you have that in front of you, sir?

A I do.

Q Your name is on this at the top?

A Yes.

Q And it's dated May 2004 in the upper right-hand corner?

A Yes.

Q Have you seen this before?

A Yes.

Q Is this something that was prepared by Weisheng?

A It's a proposal.

Q Was it prepared by Weisheng?

A Correct.

[713]MR. MASON: I offer it, Your Honor.

THE COURT: Any objection?

MR. ISAACSON: No objection.

THE COURT: 49 is received.

(Defendant Exhibit 49 is admitted into evidence.)

BY MR. MASON:

Q Please look at the third line -- fourth line, excuse me. Do you see it says in the fourth line, "Because of the SARS in 2003, VC, Vitamin C prices went straight up and for some time there was insufficient supply."

Do you see that, sir?

A I do.

Q Okay.

That was a correct statement, was it not?

A Yes.

Q In your opinion, sir, were there times when the chamber imposed industry coordination measures that talked about were not effective?

A My -- my viewpoint is if they contradicts the market price, then it will not be easy to follow.

Q And were there times when -- are you referring to supply and demand, for example?

A When there's a big fluctuation in supply and demand, then the minimum price requirement that they wanted could not be implemented.

[714]Q Okay.

Sir, you were asked questions this morning by counsel about -- about agreements that Mr. Qiao directed. So we're clear here. When Mr. Qiao directed the Vitamin C companies to make some -- or to do something in connection with either exporting or minimum price or putting product in a warehouse or shutting production, did the Vitamin C companies have a choice but to follow that under penalty of a sanction?

MR. ISAACSON: Objection.

THE COURT: Sustained.

BY MR. MASON:

Q Were there penalties that Mr. Qiao said would occur or would come to pass on Vitamin C manufacturers who did not follow instructions that he gave?

A He did.

Q And did these relate, among other things, to export quotas?

A Yeah, because exporting VC was like a lifeline of each enterprise. If he -- he restricted our export quantity,

that would be like the biggest punishment towards the enterprise.

Q Okay.

And would that also apply to instructions regarding production shutdown?

[715]A Yes.

Q And directions placing product in warehouses?

A Yes.

Q After 2002 and the imposition of verification and chop, did Mr. Qiao's authority with respect to giving instructions to the Vitamin C companies change at all?

A It did not change. Relatively speaking, his authorities were even higher than before.

Q After verification and chop or with verification and chop?

A Correct.

Q Did the concept of industry coordination change after verification and chop was implemented?

A No change.

Q Did the requirements of self-discipline change after imposition or implementation of verification and chop?

THE INTERPRETER: What was the question again?

BY MR. MASON:

Q After the implementation and verification of chop, then did the self-discipline requirements change?

A The requirements of chop towards the self-discipline of the industry did not change.

Q Were there Vitamin C meetings, Mr. Feng, where at the end of the meeting, no instructions were given by Mr. Qiao with regard to pricing or quotas or production stoppages and [716]the like?

A Every time it was according to his instruction. There was no -- no occasion that no instruction.

Q Okay.

But were there sometimes meetings where there was no agreement directed by Mr. Qiao, that he might have left it for a different day to implement an agreement?

A Yes. It all depends on the circumstances of the meeting. And if he felt that no agreement or consensus can be reached, then he may postpone it until next time.

Q At the end -- but was it always Mr. Qiao's decision as to whether or not to implement certain instructions?

MR. ISAACSON: Objection, leading.

THE COURT: Sustained on that and also vague.

BY MR. MASON:

Q Who was the decision maker at the Vitamin C committee meetings with regard to pricing and quotas and exports and production stoppages?

A It was Mr. Qiao's -- Mr. Qiao Haili who had the authority to decide.

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EXCERPT OF THE DIRECT EXAMINATION OF QIAO HAILI, HEAD OF THE VITAMIN C SUBCOMMITTEE, AND SIDEBAR, MARCH 4, 2013

* * *

[921]Q You mean after May 1, 2002?

A Correct.

Q And with respect to whether or not you could direct the companies to stop production, what authority do you have there?

A I could instruct them to stop production.

Q What authority, if any, did you have to penalize or punish the vitamin C subcommittee members, the distributors, if they did not follow your directions in these regards?

A I stopped the verification and chop so they could not export, and the export was their lifeline.

Q Did you have authority to stop their export?

A Stop what?

Q Did you have the authority to stop their export?

A I did.

THE COURT: You said "Woe ya" (Phonetic).

THE WITNESS: I did.

THE COURT: I thought he said didn't. He in fact said "I did."

Q Sir, can I direct your attention to Exhibit 9, Defendant's Exhibit 9. Mr. Qiao, did you have that exhibit in front of you?

A I do.

[922]Q Could you tell us what it is, please?

A This is the temporary specifications or rules with respect to penalizing low price exporters from the MOFTEC.

Q Where did it come from?

A MOFTEC.

Q Was it part of your job to know about this regulation?

A Yes.

Q Was it part your job to study the regulation?

A Yes.

Q Was it part of your job to understand how it worked?

A Yes.

Q Did you use this regulation in performing the duties of your office?

A Yes, I had to.

MR. MASON: I would offer this, your Honor.

MR. ISAACSON: Sidebar, your Honor? We object.

THE COURT: I think I know the arguments. The objection is sustained.

MR. MASON: Can we have a sidebar on this, your Honor?

THE COURT: Sure.

[923](Sidebar conference begins.)

THE COURT: I'll say again what I said at the last time: I want to know what the witness did, saw, heard and said. I am not putting translated Chinese legal documents in front of this jury, that was my determination, I made it in the 44.1.

What we're here on is the practical effect of what this witness thought he was able to do and what he, in fact, did, and whether the defendants reasonably believed that they had to do what he said. So I'm not -- I'm not allowing in the Chinese legal documents.

MR. MASON: Your Honor, may I cite your Honor's in order October 1. "Traditional sources of foreign law provides reliable evidence of the regulatory regime that governed defendants conduct, especially when supplemented with testimony from Mr. Qiao." And then you said, same order, page two, "regulatory regime which defendants operated is relevant to the jury's findings concerning defense of state action and sovereign compulsion." And this witness whose job it was to enforce restrictions testified that this he studied this, it was part of his job, he had to know about it to do his job, it's highly and directly relevant to what he's saying, your Honor, I think it's consistent with your order that you just read.

THE COURT: I don't think it is.

[924] MR. ISAACSON: May I say something about what your Honor said about this specific regulation? Because this is the regulation which the witness has already misstated, because this is the below cost pricing regulation, which is referred to as the low price, which is page 60 of the summary judgment decision that said it was

irrelevant to the defendants' agreement regarding output.

MR. MASON: Your Honor --

THE COURT: Right. I did rule it irrelevant, and that's why I'm not going to have the jury start determining what provision of Chinese law were applicable and what portions were not applicable. All the jury needs to know from this witness is he believed he was acting pursuant to Chinese rules and regulations, that's all that matters. And then they will determine, based on his belief and his communications with the defendants, whether there is a compulsion defense here. I'm not letting in the Chinese law in front of this jury.

MR. MASON: Your Honor, you started out at the sidebar saying you wanted to know more about the relationship with this document, so --

THE COURT: No, I don't think I did that.

MR. MASON: Well, I didn't mean to misstate what the court said, but --

THE COURT: What I said was as I said before, I [925] started out the sidebar like the last sidebar by saying this witness should be communicating to the jury what he saw, heard, did and said; that's his testimony, okay?

MR. MASON: Well, what he did, your Honor, and what he testified he did was implement this regulation and used it in his job. I mean, that's what he did.

THE COURT: I have no problem with his testimony that his thought was that he was acting in accordance with the Chinese legal requirements of his job. He can say that. The jury is not going to get involved in determining whether in fact Chinese law required him to do what he

did. Because as Mr. Isaacson points out, I already ruled the 1996 directive was not relevant as far as 2002, Mr. Mason.

MR. MASON: Thank you, your Honor. Your Honor, so we don't have this constant issue, because I don't want to burden the record here, but there are other regulations that we've identified in evidence.

THE COURT: Yes, I'm not letting in any of the Chinese legal materials. And to the extent that you marked them as exhibits, those are all being excluded.

MR. MASON: Well, there are different categories of them, but I'm not going to ask him about them in the testimony, but maybe later on you can hear us on that. I don't want to waive our objection to it by not asking about it.

[926]THE COURT: Well, it's up to the Second Circuit what you will or will not have weighed. I've given you direction on this one, which I think is out. I think from that you should be able to tell what's out.

The things that, for example, Professor Shen considered in his affidavit interpreting Chinese law are the things that I'm not going to place before the jury, because I don't want the jury doing what Professor Shen purported to do in which I did under 44.1.

MR. MASON: Well, may I ask what your Honor was referring to when you said "There was reliable evidence, the regulatory regime is relevant with the testimony of Qiao."?

THE COURT: It was relevant to my determination of Chinese law, and Mr. Qiao's testimony may or may not have helped me make that determination of Chinese law, but we are past that here, we're trying a compulsion defense.

MR. MASON: You said the regulatory regime in which the defendants operated is relevant to the jury's finding concerning the defenses of state action and sovereign compulsion." And you said we have wide latitude in trying to prove this and now you are blocking the regulations that are directly relevant.

THE COURT: Well, you know, I believe that by allowing Mr. Qiao to testify, that he believes he was acting pursuant to Chinese law and regulation, I have accomplished [927]what I intended to by that passage. To the extent that you think I'm not, and maybe you are right about that, I've revisited the issue, and I think it would be inappropriate to put Chinese legal materials in front of this jury.

MR. MASON: Okay. Thank you Judge.

(End of bench conference at 3:51 p.m.)

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EXCERPT OF THE CROSS-EXAMINATION OF QIAO HAILI, HEAD OF THE VITAMIN C SUBCOMMITTEE, MARCH 5, 2013

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[1022]Q Sir, I'm going to show you what's been marked as Plaintiffs' Exhibit 234.

You've seen this document before, right, sir?

A I have.

Q You wrote this document?

A Yes.

Q This was a report you wrote to the Ministry of Commerce?

A Correct.

Q Report is dated July 17th, 2003?

A Yes.

Q Okay. Ministry of Commerce made a request to your boss at the Chamber to do this report, right?

A Yes.

MR. MASON: Your Honor, can I -- object on leading. I don't know if Your Honor is going to deal with it.

THE COURT: It's cross-examination. Go ahead.

Q Ministry of Commerce asked you to make this report on [1023]the issue of credibility building, right?

A Yes.

Q All right. The Chamber of Medicine & Health Products put it on their Web site after you wrote the report, right?

A Yes.

Q Your boss approved putting this document on the Chamber of Commerce Web site, correct?

A Yes.

Q The Chamber had an approval process before Chamber records could be posted to the Web site, right?

A Yes.

Q And your boss' approval was part of that approval process?

A Yes.

Q Your boss would actually sign a form approving posting of this to the Web site, right?

A Yes.

Q Okay. And you also signed the form approving its posting to the Web site, right?

A Yes.

Q And this document was put on the Web site to describe for the public the work of the Chamber of Commerce?

A Yes.

Q You wanted to promote public and industry understanding of the work of the Chamber of Commerce?

[1024]A Can you repeat that.

Q Sure.

You wanted to promote public and industry understanding of the work of the Chamber of Commerce by posting this?

A Yes.

Q You even put a copyright -- or the Chamber even put a copyright notice on it, didn't it, at the end of the document after the date of July 17th, 2003?

A I don't see it.

Q I guess it's just in the English version. I won't keep you on that point.

MR. ISAACSON: I move to admit Exhibit 234.

MR. MASON: No objection.

THE COURT: It's received.

(Plaintiffs' Exhibit 234 received in evidence.)

THE COURT: Let me direct the interpreter to the line under the picture in the Chinese.

THE INTERPRETER: I see it.

MR. ISAACSON: All right. If we can put the document on the screen.

Q The document is titled "Suggestions to Establish a Credibility System."

A Yes.

Q And this was written -- this document was written in July 2003 before this lawsuit was filed in 2005, right?

[1025]A Yes.

Q And the first section of the report was titled, number one, "Work in industry self-regulation and credibility building."

A Yes.

Q And four lines down in the English -- I'm not sure about in the Chinese -- but in that paragraph, you wrote, that "the coordination of VC has yielded notable results through industry self-regulation, prices of Vitamin C exports have increased significantly."

That was your view at the time and what you reported to the Ministry of Commerce, right?

A Yes.

Q And then you went on to say that "from January of 2002 to May 2003, in comparison to the price of U.S. 2.80 kilograms at the end of 2001, VC exports brought in additional revenue of more than U.S. $63 million."

That was your view at the time and what you told the Ministry of Commerce?

A Assuming that the pricing was consistent, the same at $2.85 from January 2002 to May 2003, and we calculated these figures to illustrate the results. There's no way for me to give a scientific expression so I just assume that $2.85 was the price during that period.

MR. MASON: Your Honor, the document says 2.80. I [1026]don't know if it's a translation error or what.

THE INTERPRETER: I said 2.80, didn't I?

THE COURT: You did say 2.85.

MR. MASON: Can the record be so corrected?

THE COURT: Well, it is now.

MR. ISAACSON: All right.

Q The second topic in your report, number two, "Thoughts on the work of industry self-regulation and credibility building." And then item 3, "Suggestions to establish a credibility system."

Do you see Section 3, sir?

A I see it.

Q And what you wrote about the credibility system in 2003 is here. And you say, "The credibility system cannot be separated from industry self-regulation."

A Yes.

Q Then you go on to say, "However," in the second sentence, "the legal standing of Chambers of Commerce is still not clear." That was your view in July 2003?

A Because at the time it happened that enterprises did not comply with the instructions of the Chamber, and there's nothing the Chamber could do.

Q Exactly, sir. At this time, the enterprises were not complying with the instructions of the Chamber, your instructions, and there was nothing you could do about it?

[1027]A I'm talking about Penicillin industry, not VC industry. Because when the Penicillin industry did not comply, I had no recourse because I did not have the verification and chop process to control them.

Q Sir, in the first section, you gave the discussion about Vitamin C, didn't you?

A Which one?

Q The first section of your report.

A The first paragraph was referring to Vitamin C.

Q Didn't mention Penicillin, did it?

A I had already reported the circumstances with respect to Penicillin.

Q My question, sir, was about your report. Do you even use the word "Penicillin" in this report?

A No.

Q Didn't think so.

And what you said was to the Ministry, that "the legal standing of Chambers of Commerce are still not clear and that regulations and rules formulated by companies in the industry organized by the Chambers of Commerce lack legal basis."

A It all refers to the Penicillin industry.

Q Without mentioning Penicillin. And in fact, what you refer to are the rules and regulations formulated by companies in the industry organized by the Chamber of [1028]Commerce, right?

THE COURT: I think you should rephrase.

Q All right. You go on to say -- well, specifically here you were discussing, sir -- you were discussing here, sir, regulations and rules formulated by companies in the industry organized by the Chambers of Commerce.

A Yes.

Q And you say that they also -- it's also difficult to gain support from government departments, right?

A Correct.

Q You also say, "These rules and regulations simply become formality," end quote. Only "honest fellows will follow."

A Yes.

Q At the time you wrote this report in 2003, sir, you were telling the Ministry you did not have the power to enforce self-discipline measures, right?

A With respect to the Penicillin industry, I did not have the authority.

Q All right. Sir, you mentioned the deposition that took place over two days. Page 235, beginning at line 16. Trevor, could you play that for me.

(Videotape played.)

Q At your deposition, you told me it was right that you were telling the Ministry you did not have the power to [1029]enforce self-discipline measures. And you didn't say anything about Penicillin, did you?

A The fact that I did not mention at that time does not mean that I did not -- it did not refer to the Penicillin industry.

Q Okay. You gave me -- you told Mr. Mason, you understand what truthful testimony is, right?

MR. MASON: Your Honor, this is -- objection.

THE COURT: Overruled.

A I understand.

Q You gave truthful testimony at your deposition, didn't you, sir?

A Yes.

Q Now, in this report, you told the Ministry that when companies did not exercise self-discipline, you did not have any means of controlling the situation, right?

A Aside from Vitamin C.

Q Sir, can we -- your deposition, now we're at, Trevor, at 232, beginning at line 5.

I'm going to again show you what you said when I asked you that question at your deposition, sir.

(Videotape played.)

Q What you told me at your deposition, sir, was that you didn't have the authority to restrain -- no means of restraining the company, no means of sanctioning them, no [1030]means of controlling them. That's what you told me at your deposition, sir, without mentioning Penicillin.

A Just like I said earlier over there, I say if the government will supply certain means to us, it would have been better.

Q It wasn't just a matter of making it better, sir, was it? You told the government that your rules were simply a formality and only honest fellows will follow.

A If there was no controlling means, that's surely to happen.

Q And then you asked the Ministry, you said, we need legislation to define the legal status of the Chambers of Commerce.

A Yes.

Q And you said that when verification and chop was in place, right?

A Correct.

Q And there was no question about the legal status of the Ministry of Commerce in July of 2003, was there?

A The Ministry of Commerce?

Q It had clear legal status, right?

A Yes.

Q It wasn't like the Chamber?

A Right.

Q And then you told the Ministry, "We also need support [1031]from relevant government departments to assist Chambers of Commerce in asserting their authority.

A Yes.

Q And you said that you needed that support so that the Chambers of Commerce could punish companies.

A Yes.

Q Companies who have little credibility.

A Towards the companies that violated the self-disciplined regulations of the industry.

Q Exactly. You needed support from relevant government departments to punish companies who violated the self-discipline regulations of the industry.

A Yes, yes.

Q All right. And you wanted to honor those who are trustworthy. Those are the ones who do obey by themselves the industry agreements, right?

A Yes, yes.

Q Sir, you told defense counsel that you had the power to cut the lifeline of these companies. That was completely different from what you wrote the Ministry of Commerce in July 2003, right?

A With respect to Vitamin C, I had controlling means. The government supported me towards the Vitamin C. The difference from here. The other one, government gave me support, gave me means. These refer to the merchandise that [1032]I was not given authority to. Because the Chamber is not just regulating Vitamin C. There are many other merchandise.

Q None of what you're telling me now is what you wrote in July 2003, is it?

A In '03, what I wrote in this section was not referring to Vitamin C. The first section I was referring to the accomplishments of Vitamin C.

THE COURT: Mr. Isaacson, maybe you want to wrap up this line.

MR. ISAACSON: Yeah. I had one more question on this.

Q What you're telling me now is different from what you told me in your deposition, isn't it, sir?

A Basically the same. Not much different.

MR. ISAACSON: All right. Thank you, sir.

Q I want to talk to you about export volumes or quotas. It's your testimony, isn't it, that the Chamber did not use verification and chop to control export volume between March 2003 and July 2006?

THE INTERPRETER: You did not or you did?

MR. ISAACSON: You did not.

A Yes.

Q Let me just make sure I have it correct. Is it correct that you did not use verification and chop to control export [1033]volume between March 2003 and July 2006?

A Yes.

Q And you did not give instructions about the quantities for export of Vitamin C from March 2003 to July 2006?

A It just through establishing the warehouse and stoppage of production to control.

Q I'm talking about the quantities for export, sir. You did not give instructions about the quantities for export of Vitamin C from March 2003 to July 2006, did you?

A Yes.

Q And you did not give any directions at all for the quantity of exports for Vitamin C from March 2003 to July 2006?

A Yes.

Q For example, you did not give any directions to Mr. Feng about the quantity of Weisheng's exports from February 2003 to July 2006?

A Yes.

Q Okay. Now, from March 2003 to July 2006, it's your testimony that you only elected to control the minimum price and not the volume, right?

A Yes.

Q From March 2003 to June 2006, what you're saying is the only way you had to control the companies was verification and chop for a minimum price?

[1034]A Yes.

Q I want to talk to you -- and that's because there were no quotas the companies could lose after March 2003 until July 2006?

A I didn't hear clearly.

Q There were no quotas that the companies could lose from March 2003 through July 2006, right?

A I don't know what you mean by lose -- losing. There was no set quota.

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[1038]Q Thank you. From 2002 forward, there were no agreements on minimum price at Vitamin C subcommittee meetings that went forward without the support of a majority of the manufacturers, right?

A It was at my request I instructed them, requested them to do it that way.

Q My question is not about what you requested, sir.

It is correct that from 2002 forward, there were no agreements on minimum price at the Vitamin C subcommittee meetings that went forward without the support of a majority of the manufacturers?

A That's true.

Q It's also true, isn't it, sir, that from 2002 forward there were no agreements on export quotas or quantities at Vitamin C subcommittee meetings that went forward without the support of a majority of the Vitamin C manufacturers?

A No, that happened. For example, like in '01 when we were trying to resolve the quota issues, all the enterprises were having big arguments. And so eventually the Chamber forced the issues for the allocation.

Q We'll talk about 2001 a little later. From 2002 forward, there were no agreements on export quotas or [1039] quantities at Vitamin C subcommittee meetings that went forward without the support of a majority of the Vitamin C manufacturers, correct?

A Whether there was agreement or not depended on the circumstances. It's not that every meeting we had to come to some agreement. And when the market was rather stabilized, I did not require them to come to any agreement. When they disagreed and I have stipulated the price as well. For example, 9.20, they didn't agree.

Q Sir, I want to show you a section of your deposition. Line 280 -- page 280, beginning at line 12, Trevor.

(Videotape played.)

Q That was truthful testimony, wasn't it, sir?

A Yes.

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EXCERPT OF PROCEEDINGS BEFORE THE EASTERN DISTRICT OF NEW YORK, MARCH 5, 2013

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[1040]THE COURT: Anything we need to talk about?

MR. MASON: Yes, Your Honor.

THE COURT: Be seated, please. The witness may step down.

(Witness exits the courtroom.)

MR. MASON: Respectfully, Your Honor, I don't want to beat a dead horse, but I want to ask Your Honor to revisit your ruling yesterday about not giving them regulations and laws. We heard counsel just now hammer the witness on your authority and whether there was a law and whether or not the MOFCOM directed you to undertake these actions with regard to Vitamin C. And the regulations give him the authority and say it's there.

So what he's trying to do, and I can see why, of course, is he wants to keep out the regulation and then suggest to the jury he didn't have the power to do this or it wasn't enforceable; in fact, when there are laws that say it was enforceable and you're not letting us put those in.

And quite frankly, Your Honor, it's just not fair. We're litigating this case with one arm behind our back if [1041]you keep these regulations out when counsel is arguing that he had no authority and I can show it that are very clearly before the Court. And I think we ought to be able to put those in evidence because he opened it up and he raised it. You can't have it both ways.

MR. ISAACSON: Your Honor, with your permission, Mr. Mason was allowed to ask this gentleman questions about his understanding of his authority and what he communicated to people about his authority. I talked to him about the document and asked him about what his understanding of his authority was in 2003 and what he said about his authority. I didn't put any rules or regulations or debate with him about whether he was right or wrong.

But it was fair game to reply to the testimony about what he understood his authority was and what he said his authority was.

MR. MASON: Your Honor, of course, he didn't put those regulations in. My point is that he cross-examined him on an area where we have contrary evidence and you won't let that in, at least you didn't as of yesterday. And he ought not to be able to do that. He ought not to be able to bring out testimony which we know is contradicted by the law of China and you, Your Honor, hasn't let that in. It's just not right.

MR. ISAACSON: Your Honor, you've already ruled [1042]that the written laws of China do not require compulsion.

MR. MASON: Your Honor, that's the evidence -- excuse me. As I understand it, that's the fact that this jury is going to decide. And that's what Your Honor said and we ought to -- if he's going to raise this point and argue this, then we ought to be able to put these rules in. He should not be able to have it both ways. It's terribly prejudicial and unfair.

THE COURT: I don't think he's having it both ways. The point is, there may have been certain legal directives on the books. All Mr. Isaacson did was show the witness a memo that says I don't have the power I need or at least it could be argued to the jury that it says that.

MR. MASON: But, Your Honor --

THE COURT: That's his feeling. That's what he was cross-examined on. It goes to his credibility. It did not go to the actual legal state of affairs.

MR. MASON: This is a big setup. He gets you to say we can't get these rules and regulations in, and now he's suggesting to the jury by this testimony or he's trying to that those rules and regulations don't exist when they do.

THE COURT: He is not suggesting that.

MR. MASON: Of course he is, Your Honor.

THE COURT: No, I don't think he is. He is asking [1043]for the witness' own understanding of what legal -- what abilities he had to enforce verification and chop. His own understanding, independent of what may have been out there in the law.

MR. MASON: Respectfully, Your Honor, these documents that we want to put in evidence support the view -- the proposition that he had the authority and the backing of the government to do this. And the impression that Mr. Isaacson wants to leave is that he didn't have it. So we're quibbling now whether it was Penicillin or some other product. The fact is we nail it with these documents. And keeping them out -- you talk about 403. It's highly prejudicial to us to keep them out because they directly contradict what counsel's arguing.

THE COURT: All right. I don't think they do, and I think you're merging the legal regime with this witness' knowledge and understanding of what he did. The trial is about what he did. I have allowed you, I have not curtailed you, from asking him whether in his view he thought under the regulatory regime he had the power to impose pricing and export quotas. And he has told you on your direct examination that under that regime, he thought he did. Mr. Isaacson has shown him a memo that tends to undercut that.

MR. MASON: Your Honor, the witness testified that [1044]he drew his authority for performing his duties from these rules and regulations. Among the authorities that he drew was the right to punish people and the right to do what he's doing. And Mr. Isaacson is leaving the jury with the impression, or wants to at least -- and he's certainly going to argue this in closing, you can bet on it -- that he didn't have that authority when we have a document that says clearly more than ever that he had the authority from the government.

THE COURT: Your problem is you have words out of the witness' own mouth saying he doesn't have the authority.

MR. MASON: No, Your Honor. No, no, to the contrary. He testified he did have the authority.

THE COURT: And you can argue that to the jury.

MR. MASON: But, Your Honor, why am I limited given what --

THE COURT: Because the jury, as I told you, cannot determine what Chinese law is.

MR. MASON: Your Honor --

THE COURT: Mr. Mason, I've heard you. I'm adhering to my ruling.

MR. CRITCHLOW: May I approach this from a slightly different angle?

THE COURT: You can try.

MR. CRITCHLOW: Okay. I heard the witness testify [1045]that he was talking about Penicillin when he wrote that.

THE COURT: Correct.

MR. CRITCHLOW: And Mr. Isaacson is asking questions about Vitamin C or about verification and chop generally. This regulation clearly lists the products that are under verification and chop. And Penicillin is not one of them.

THE COURT: I know. I see. Penicillin is omitted.

MR. CRITCHLOW: Penicillin is not omitted. It's not covered. It's not covered.

THE COURT: Right. So Vitamin C is listed in the regulation.

MR. CRITCHLOW: Vitamin C is listed and Penicillin is not. It's exactly what the witness is saying.

MR. ISAACSON: They can ask him the question, is Penicillin covered by verification and chop? You don't need to show a law and regulation on it.

MR. CRITCHLOW: I think there's a difference between the witness testifying from the stand where the

jury has to assess his credibility and the written terms of the regulation itself, which unquestionably show what is covered and what is not.

THE COURT: I might allow a redacted version of the regulation, a heavily redacted version, that would [1046] simply show nothing more than there is a regulation authorizing verification and chop as to Vitamin C, but not as to Penicillin. You have to cut it to an absolute minimum in order to do that, but on redirect, if there is such a document, I will let him have that.

MR. CRITCHLOW: Thank you.

MR. MASON: Thank you.

MR. ISAACSON: We would stipulate the verification and chop does not cover Penicillin.

MR. MASON: No.

THE COURT: Well, let's talk about that. Let's talk about that.

Will you also stipulate that there is a regulation issued by the Chinese government that requires verification and chop for Vitamin C and a number of other products and not Penicillin?

MR. ISAACSON: Let me look at that over lunch because we had other critiques of that regulation.

THE COURT: Okay. Well, that's why I'm saying a heavily redacted form. Simply to show the fact that I've suggested could probably be stipulated to.

MR. CRITCHLOW: Let me just address a relevant point to that, it's Defendants' 31, which is that I think

that the full list of the regulation gives an important kind of context because we're not talking about thousands of [1047]products that are subject to verification and chop. We're talking about a handful of products.

THE COURT: I'll let you have in as part of the redaction.

MR. CRITCHLOW: So that the jury can see that when the witness was writing his memo, there are hundreds of products that are out there and he could be talking about those with the verification and chop regime only covering a few.

THE COURT: I understand what you're saying. And I will allow the list as part of the redaction showing the absence of Penicillin and the presence of Vitamin C plus other products to come in. What I will not allow is a lot of legal-ese language that's in the regulation that goes beyond that and appears to give it force of law or what the enforcement mechanisms are or anything like that.

MR. CRITCHLOW: I understand you completely, Your Honor. I was just making the point that a stipulation doesn't quite get at the point that I was making. The list does.

THE COURT: Well, you might include the list in the stipulation. I will allow the parties to try to work that out over lunch. If not, I will look at the redaction that you'll prepare for me and see if that works.

MR. CRITCHLOW: That's fine.

[1048]THE COURT: Okay.

(Luncheon recess taken.)

EXCERPTS OF THE CROSS-EXAMINATION OF QIAO HAILI, HEAD OF THE VITAMIN C SUBCOMMITTEE, MARCH 5, 2013

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[1059]Q Now, I want to ask you about vitamin C subcommittee meetings before the lawsuit was filed.

A Yes.

Q Before the lawsuit was filed, during vitamin C subcommittee meetings, you could see individuals from the companies who attended taking notes or minutes, right?

INTERPRETER: You received.

THE COURT: Could see.

A Yes.

Q And in fact, you could see individuals from all of the companies attending the meetings taking notes.

A Yes.

Q In fact, you remember individuals from Weisheng taking notes and minutes during the meetings?

A I never look at it that closely.

Q But you could see that the individuals from Weisheng were [1060]writing notes or minutes, right?

A Yes, I did.

Q You also remember individuals from Hebei Welcome, taking notes or minutes during the meetings?

A I didn't pay too close of attention.

Q Well, in fact, sir, you do remember that individuals from Hebei Welcome did take records during the meetings, although you don't remember the names of the individuals.

A I didn't notice that too closely.

Q Trevor, page 53 of the deposition, 10 through 15.

(Exhibit played.)

Q That testimony was truthful and correct, wasn't it, sir?

A It was true.

Q Now, and you don't know what happened to the notes of these companies, right?

A That I don't know.

Q Now, after this lawsuit was filed, if you saw anybody from a company taking notes at meetings, you told them to tear them up, right away.

A I did not allow note taking.

Q Well, in fact if you saw someone taking notes, after the lawsuit was filed, you told them to tear it up, right?

A Correct.

Q So there were notes that were torn up?

A I told them that I did not allow note taking.

[1061]Q And then they tore up their notes?

A No note taking was allowed.

Q And after you told them to tear up their notes, they did that?

A If they did take notes, then it would be torn apart.

Q And you gave these instructions because of the existence of this antitrust case?

A Yes.

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[1078]Q Sir, you spent sometime testifying about the 1997 charter.

A Yes.

Q Which is DX 11, which you should have in front of you.

To assist you, it is over in this book. I will give you a loose copy marked as PX 73, this is the 2002 chart.

INTERPRETER: 2002.

Q So, you have in front of you the 1997 charter, and the 2002 charter, right?

A Yes.

Q You are very familiar with both of these documents, I think is your testimony?

A Yes.

Q Now, we put together a little comparison of these documents and I want to ask you about whether we have got these things right.

The first one at the top Article 2, you have to look at-- I will ask you to look at Article 2 of the 1997 charter. That provides that an industrial organization, organized upon approval by the MOFTEC, and under the leadership of the chamber by those member enterprises, right? You have got the Chinese versions to refer to.

INTERPRETER: Yes.

[1079]Q Now, that provision of the 1997 charter did not become part of the 2002 charter, instead the 2002 charter said the subcommittee is a self disciplinary trade organization jointly established on a voluntary basis by members of the Chamber of Commerce engaging in vitamin C import and export business in Article 3.

That was a change that was made between the 1997 charter and the 2002 charter, right?

A It was changed.

Q Article 6 of the 1997 charter, sir. The subcommittee will make proposals on the export development plan and annual export quota allocation, supervise the implementation, export license by member enterprises and advises on allocation adjustment of export quota and issuance of export license.

That provision was not put into the 2002 charter, was it, sir?

A Yes.

Q Article 7 of the 1997 charter. The subcommittee shall coordinate and administrate market, price, customer and operation order of vitamin C export.

A Yes.

Q That provision was not put in the 2002 charter, was it?

A The fourth item, the number four item in the 2002 charter has that content.

Q By the fourth item, are you referring to Article 4?

[1080]A Yeah, the Article 4. Article 4.

Q But with very different language, right?

A Right.

Q Now, Article 4 in fact says, the subcommittee is going to protect fair competition, right?

A Yes.

Q Article 10 of the 1997 charter, which if my memory is correct, you looked at with defense counsel, it talks about the subcommittee shall hold meetings and one of the things they are going to hold meetings about is to analyze and work out coordinated prices for vitamin C export, to supervise and inspect the implementation of such coordinated export prices set by the subcommittee. That is Article 10 in 1997, right?

That provision was not included in the 2002 charter, was it?

A Article 7 expresses something similar. Article 7.

Q Something similar, sir, it has got completely different language, doesn't it?

A There is expressed differently.

Q All it says in Article 7, is the subcommittee introduces the state economic and trade laws, regulations, guidelines and policies to the members and guides and supervises the members to operate their businesses in accordance with the law.

A Number eight, Article 8. Sorry.

Q Let's look at Article 8.

[1081]Article 8 makes no reference to coordinated export prices, does it?

A The fact that it's not written doesn't mean that that is not done. It was still done.

Q The 1997 charter expressly talks about coordinating export prices, the 2002 charter did not mention it, isn't that right?

MR. MASON: Your Honor, objection. That misstates the charter.

THE COURT: Overruled.

A It was not written.

Q Article 12, sir, of the 1997 charter, this is the section on members.

Article 12 says, only the members of the subcommittee have the right to export vitamin C and are simultaneously qualified to have vitamin C export quota.

A Yes.

Q That provision was not included in the 2002 charter, right?

A Yes, situations change already.

Q Exactly.

If I can ask you to look at the 2002 charter, Article 16, little item eight.

That provides for freedom to withdraw from the subcommittee, right?

[1082]A Yes.

Q That freedom was not included in the 1997 charter, was it, sir?

A No.

Q Article 15 of the 1997 charter, sir. There is an item one, these are all members' obligations.

A Yes.

Q Item one, to comply with various directives, policies and regulations with respect to foreign trade.

Item five, reports vitamin export of previous two months. I think you were asked about that.

Item six, strictly execute export coordinated price set by the Chamber and keep it confidential. I think you were asked about that.

Those provisions didn't-- were not put into the 2002 charter, were they?

A Yes.

Q All right. Let me ask you about the penalty provision of the 1997 charter. I think you may have been asked about this.

Article 16. The subcommittee will suggest to the competent governmental department through the Chamber to suspend and even cancel the vitamin C export right of such violating member.

Article 16. The last sentence.

INTERPRETER: Last sentence?

[1083]MR. ISAACSON: Yes.

A Yes.

Q Now, if you look at the penalty section of the 2002 charter, that is Article 19-- at the bottom of Article 19.

Do you see where it says there, after one, two, three and four, the disciplinary actions of the subcommittee include circulation of notice of criticism, issuance of warning, temporary suspension of membership or cancellation of membership. Punishment must be approved by the council of the subcommittee.

A Yes.

Q That is how the penalties provisions changed, right?

A Yes.

Q Just be patient with me, sir. A few more provisions that were discussed.

Article 18, section five of the 1997 charter. This is in the section on the functions of the members meeting.

Number five, function is to discuss and set export coordinated price, do you see that?

That was not--

A I see it.

Q That was not a function of the members meeting in the 2002 charter, was it?

A Doesn't mean it is not there.

Q Well, it does mean it is not actually in the 2002 [1084] charter, does it?

A Yes.

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EXCERPTS OF THE RE-CROSS-EXAMINATION OF QIAO HAILI, HEAD OF THE VITAMIN C SUBCOMMITTEE, MARCH 7, 2013

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[1229](Plaintiff's Exhibit 252 received in evidence.)

BY MR. ISAACSON

Q If we could show 252 on the screen.

Now, this is about penicillin, sir, so I'm not going to go through it blow by blow here.

In the second paragraph there is a reference to the chamber of commerce convened that penicillin discussion forum and then a summit and there's two dates, July 31st, 2003 and September 29th, 2003, do you see that?

A Yes.

Q And then it says both meetings studied and discussed the implementation enforcement of the industry self discipline and the cooperative negotiations were able to reach a common agreement. And then it lists manufacturers who signed the agreement.

A Yes.

Q So the agreement was signed after the summit on [1230] September 29th, is that right?

A Yes.

Q And I see North China Pharmaceutical Group Corporation is one of the signatories. Were they a member of the chamber?

A No.

Q So you could be a member of the subcommittee without being a member of the chamber?

A No. He is not a member of the chamber either.

Q Okay.

You're saying the company was not a member of the subcommittee or the chamber but it was part of the agreement?

A Right.

Q All right. And then in the second to last paragraph there's -- it talks about the chamber of commerce convened another discussion forum on December 2nd, 2003, do you see that?

A Yes.

Q And it says that due to one company's non-compliance the meeting was unable to reach a consensus?

A Yes.

Q All right.

And that -- that's the -- that's the company that you were talking about in your testimony breaking the [1231] agreement?

A Yes.

Q And that took place after September 29th, 2003 and sometime before this meeting on December 2nd?

A Yes.

Q And then in the last paragraph that's where you criticize the company?

A Yes.

Q And you weren't worrying about courtesy at that point, right?

A Because he hurt the entire industry. And if agreement was reached it would be another cordial agreement. And if it was -- it was actually implemented then it would be another cordial agreement.

Q Okay.

Sir, the penicillin agreement that you testified about happened on or after September 29th of 2003. The breaking of that agreement happened after September 29th, 2003?

A Afterwards.

MR. MASON: Your Honor, may we have a brief sidebar.

(Sidebar begins.)

[1232]THE COURT: How much further are you going to go?

MR. ISAACSON: One or two more questions.

MR. MASON: Your Honor, I didn't know where he was going but it's clearly beyond the scope.

THE COURT: He went into a memo that referred to Vitamin C and the witness then said no, I was really talking penicillin. Then I let you get in the exhibit on

penicillin. Now he's allowed a little leeway, you know --

MR. ISAACSON: I'm almost done.

THE COURT: On recross to show that penicillin is not what penicillin purports to be.

MR. MASON: That's not where he's going.

MR. ISAACSON: Yes, it is.

MR. MASON: I think he's going on NCP.

THE COURT: No. He's contrasting penicillin, your view with his view. So let's have a couple more questions and let's get through it.

(Sidebar ends.)

[1233]THE COURT: Continue, please.

BY MR. ISAACSON

Q Sir, the penicillin agreement that you testified about happened after September 29th, 2003?

A Correct.

Q The breaking of that agreement happened after September 29th, 2003?

A No.

Q The breaking of the agreement happened after September 29th?

A Yeah, afterwards.

Q And the memo that you wrote to the Ministry of Commerce said you lacked legal authority, that you told

me was about penicillin was dated July 17th, 2003. That memo was written before the penicillin agreement and the breach of the penicillin agreement, right?

A Yes.

MR. ISAACSON: Have no further questions.

MR. MASON: I have one.

REDIRECT EXAMINATION

BY MR. MASON:

Q Sir, does the document you were just asked about have anything to do with Vitamin C?

A No.

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SELECTED EXHIBITS FROM DEFENDANTS' RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW, FILED IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

EXCERPTS OF REPORTS OF THE PANEL: CHINA – MEASURES RELATED TO THE EXPORTATION OF VARIOUS RAW MATERIALS, DATED JULY 5, 2011

WORLD TRADE ORGANIZATION

WT/DS394/R
WT/DS395/R
WT/DS398/R

5 JULY 2011
(11-3179)

CHINA – MEASURES RELATED TO THE EXPORTATION OF VARIOUS RAW MATERIALS

Reports of the Panel

[TABLES INTENTIONALLY OMITTED]

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F. EXPORT LICENSING

7.862 The complainants have raised several challenges to China's export licensing framework through which China administers exports of forms of manganese and zinc and through which China administers exports quotas

on forms of bauxite, coke, fluorspar, silicon carbide and certain forms of zinc.[1225]

7.863 The complainants submit that China's export licensing requirement for these raw materials is "non-automatic" and amounts to a restriction on exportation additional to the restriction effected by export quotas themselves. That additional restriction, they argue, is inconsistent with Article XI:1 of the GATT 1994.

7.864 The United States and Mexico submit that China restricts the exportation of the raw materials at issue through an export licensing system that is "non-automatic" in "nature".[1226] They submit that China has itself conceded that its export licensing system amounts to an export restriction under GATT Article XI:1.[1227] The European Union submits that China's export licensing system as set forth in relevant measures is "non-automatic by law"[1228] and is therefore inconsistent with Article XI:1.

1225. The specific forms of the raw materials subject to the United States' and Mexico's claims are identified in Exhibit JE-6 and paragraph 2.2 of the Descriptive Part to these Reports.

1226. United States' first written submission, paras. 338-339, 342.

1227. United States' second written submission, para. 378 and Mexico's second written submission, para. 383, referring to Committee on Market Access, Note by the Secretariat: Notifications of Quantitative Restrictions G/MA/NTM/QR/1Add.11 (11 April 2008) (Exhibit JE-171) and Catalogue of Products Subject to Export (Quota) License (2007 QRs of China final) (Exhibit JE-172).

1228. European Union's first written submission, para. 317.

7.865 The complainants submit that China's export licensing system is also inconsistent with Article XI:1 because it provides China's export licensing agencies with discretion to restrict exportation of the raw materials at issue.

7.866 The United States and Mexico assert that China's export licensing system "provides China with the authority, the ability and the discretion to control and restrict the exportation of the subject products."[1229] They argue that licensing agencies may exercise discretion to set the quantities of goods that can be exported, the price at which products can be exported, and the qualifications that exporters must possess; moreover, they can impose other conditions, such as requiring "undefined 'documents of approval' and 'other materials to be submitted' as bases for issuance of export licences".[1230]

7.867 The European Union argues that China's export licensing system "allows China's authorities a very broad and unfettered discretion on whether to grant or refuse export licences to applicants".[1231] It submits that there is no limitation on the discretion on the part of the Ministry of

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1229. United States' oral statement at the second substantive meeting, para. 122; see also United States' second written submission, para. 377; Mexico's second written submission, para. 382 (stating that "the licensing system provides China with the authority and the ability to control and restrict, i.e., impose limiting conditions, on products designated for export restriction").

1230. United States' first written submission, para. 340, fn. 415; Mexico's first written submission, para. 343, fn. 415.

1231. European Union's first written submission, para. 319.

Commerce to require undefined "other documents"[1232] or "documents of approval"[1233], which allows China's export licence agencies to restrict, or altogether ban, exportation by certain companies.[1234]

7.868 In its first written submission, the European Union additionally argued that China's licence issuing authorities could restrict or prohibit the exportation of the raw materials at issue by exercising discretion to interpret undefined "management qualifications" in a discriminatory fashion.[1235] In response, China contested the European Union's translation of the term, arguing the term should be translated as "business qualifications".[1236] In addition, China submitted that its licence issuing authorities have no discretion whatsoever in interpreting the meaning of this term and explained that applicants must simply submit one of the documents set out in Article 6 of the Working Rules on Issuing Export Licences once a year to show that the applicant is qualified and

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1232. European Union's first written submission, para. 319; *2008 Export License Administration Measures*, Article 11 (Exhibits CHN-342, JE-74); *2008 Export Licensing Working Rules* (Exhibits CHN-344, JE-97).

1233. European Union's first written submission, para. 321; *2008 Export License Administration Measures*, Article 11 (Exhibits CHN-342, JE-74).

1234. European Union's first written submission, paras. 319, 321.

1235. European Union's first written submission, para. 320, referring to *2008 Export Licensing Working Rules*, Article 8.

1236. China's first written submission, para. 786.

registered to do business in China.[1237] Following China's explanation, the European Union indicated that it "accepts" China's "official declaration" in Exhibit CHN-345 that the fulfilment of the "business qualifications" condition simply requires "submission of the applicants' Business Licence and the certificate showing that the applicants are authorised to engage in import and export trade".[1238] (The European Union maintains, however, that China has acted inconsistently with GATT Article X:1 by failing to publish the "method of verification of the 'business qualifications' criteria"[1239]). In light of further clarification by the European Union of its Article XI:1 claim, and in light of the Panel's determination that the European Union's Article X:1 claim in respect of export licensing is outside its terms of reference, the Panel will not consider further the European Union's claim in connection with the requirement to demonstrate "business qualifications" in Article 8 of the Working Rules on Issuing Export Licences.

7.869 In addition to their claims under GATT Article XI:1, the complainants submit that requirements imposed under this export licensing system are inconsistent with paragraphs 162 and 165 of China's Working Party Report. They argue that these paragraphs contain "enforceable

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1237. China's first written submission, paras. 786-787.

1238. European Union's second written submission, para. 87; European Union's response to the Panel question No. 59 following the second substantive meeting paras. 81-83.

1239. European Union's response to the Panel question No. 59, following the second substantive meeting para 83.

commitments"[1240] and prohibit China's imposition of "non-automatic export licensing and export restrictions" that are not justified.[1241]

7.870 The European Union further contends that China's export licensing system is inconsistent with paragraphs 5.1 and 1.2 of China's Accession Protocol, read in combination with paragraphs 83 and 84 of China's Working Party Report. The European Union submits that, under these provisions, China is required to grant the right to export to all enterprises in China, including foreign ones, and to eliminate its system of examination and approval of enterprises' rights to export. The European Union submits that the discretion by China's licence issuing authorities to refuse to grant export licences is tantamount to a system of examination and approval of trading rights.[1242]

7.871 Finally, the European Union claims in the alternative that China failed to publish regulations and rulings connected with the administration of its export licensing system in contravention of GATT Article X:1, and that China administers its export licensing system in a manner inconsistent with GATT Article X:3(a). The Panel determined, however, in Section VII.A.3 au-dessus, that the European Union's alternative claims under Articles

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1240. United States' first written submission, para. 343; Mexico's first written submission, para. 346.

1241. United States' first written submission, paras. 345-346; European Union's first written submission, paras. 323-324; Mexico's first written submission, paras. 348-349.

1242. European Union's first written submission, paras. 334-336.

X:1 and X:3(a) are not in the Panel's terms of reference.

7.872 China requests the Panel to reject the complainants' claims. First, China argues that it no longer subjects exports of fluorspar to an export quota under the 2010 Export Licensing Catalogue; hence, it argues that the Panel should not consider the complainants' claims in respect of fluorspar.[1243]

7.873 China also contends the its export licensing agencies may not exercise discretion to refuse an export licence application for forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc at issue, when the requisite application and documents are submitted. China argues that in all cases export licensing authorities "automatically" grant export licences within three days following submission of a valid application and specified documents.[1244] Accordingly, China argues that its export licensing system does not restrict exportation in a manner inconsistent with either Article XI:1 of the GATT 1994 or any obligations in paragraphs 5.1 and 1.2 of China's Accession Protocol, or with paragraphs 83 and 84, or 162 and 165 of China's Working Party Report.

7.874 If the Panel were to find China's export licence requirement inconsistent with Article XI:1, China requests that the Panel exercise judicial economy with respect to the complainants' remaining claims under its Accession Protocol and Working Party Report. China considers that

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1243. China's first written submission, para. 67.

1244. China's first written submission, paras. 771, 776; China's second written submission, para. 499.

these claims are "identical" to those under Article XI:1 and submits that findings under these provisions "would add nothing to the resolution of this dispute, nor would it aid in any potential implementation."[1245]

7.875 In addition, China asserts that the United States and Mexico have abandoned their claims that China's export licence requirement is inconsistent with paragraphs 162 and 165 of its Working Party Report by failing to identify these provisions when asked by the Panel to list "all measures relevant to this dispute for which they are seeking 'recommendations' from the Panel".[1246]

7.876 As a preliminary matter, the Panel recalls its finding in paragraph 7.33 au-dessus that, in general, measures that were in force when the Panel was established on 21 December 2009 form the basis of its terms of reference.[1247] At the request of the complainants, the Panel will only assess the WTO consistency of the 2009 measures while taking note that the 2010 measures do not set a quota for fluorspar.

7.877 Before turning to an analysis of the parties' claims, the Panel wishes to address first China's contention that the United States and Mexico abandoned their claims with respect to paragraphs 162 and 165 of China's Working Party Report, mentioned above. The Panel observes that

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1245. China's first written submission, paras. 808, 881.

1246. China's second written submission, paras. 477-478.

1247. The Panel observes, however, that its decision to assess the complainants' claims here does not foreclose the possibility of considering 2010 measures in other contexts.

China is correct in that the United States and Mexico did not list their claims under paragraphs 162 and 165 of China's Working Party Report when identifying, in response to the Panel's request, the measures and claims for which they are seeking recommendations.[1248] The United States and Mexico did, however, identify these provisions in their Panel Requests. They also addressed these claims in their first written submissions. In addition, the United States submitted Exhibit US-1 during the second substantive meeting of the parties, which refers to paragraphs 162 and 165 in connection with export licensing. In our view, the United States and Mexico have governed themselves in the course of these proceedings as if these claims were very much active ones, and we do not consider them as abandoned. The more appropriate conclusion is therefore, that the omission of these claims in response to a question from the Panel was merely an oversight. The Panel accordingly concludes that the United States and Mexico did not intend to abandon their claims with respect to Paragraphs 162 and 165 of China's Working Party Report, and accordingly will consider these claims below.

7.878 The Panel will first set out its understanding of the operation of China's export licensing systems for the raw materials at issue It will then analyze the claims of the parties. Finally the Panel will address, as relevant, China's request that the Panel exercise judicial economy with respect to claims under China's Accession Protocol and Working Party Report.

1248. Complainants' responses to first set of Panel questions, question No. 2.

1. The operation of China's export licensing system

7.879 China's Import and Export Regulations define "export licences" as "the various kinds of certificates and documents that are of export nature as provided in laws and administrative regulations".[1249] The exportation of goods from China is unrestricted unless otherwise provided for by law or regulation.[1250] China's *Foreign Trade Law* distinguishes between goods that may be freely exported (Article 15) and goods that may be restricted (Article 19). Goods that are freely exported pursuant to Article 15 may be subject to automatic licensing for monitoring purposes.[1251] Goods that are subject to restriction pursuant to Article 19 may be subject to licensing as "goods subject to ... export restriction".[1252]

7.880 For those goods subject to export restriction, an exporter may proceed to export only after obtaining an export licence for presentation to China's customs for declaration and examination.[1253] Export licences are

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1249. *Regulation on Import and Export Administration*, Article 43 (Exhibit JE-73).

1250. *Foreign Trade Law*, Article 14 (Exhibit JE-72); *Regulation on Import and Export Administration*, Article 4 (Exhibit JE-73).

1251. *Foreign Trade Law*, Articles 15, 16, 17 (Exhibit JE-72).

1252. *Foreign Trade Law*, Article 19 (Exhibit JE-72); *Regulation on Import and Export Administration*, Article 35 (Exhibit JE-73); *2008 Export Licence Administration Measures*, Article 2 (Exhibits CHN-342, JE-74).

1253. *Regulation on Import and Export Administration*, Article 43 (Exhibit JE-73); 2008 Export Licence Administration Measures, Article 6 (Exhibits CHN-342, JE-74).

generally valid for up to six months and expire no later than 31 December each year.[1254] The period of validity may be extended if an export licence is not fully used.[1255] For those goods that are simultaneously subject to export quotas, applications for licences must be made within the period of validity of the quota.[1256]

7.881 China's MOFCOM, through its Bureau of Quota Licence, is responsible for the application of export licensing rules and for coordinating export licence issuing agencies that are organized in local administrative authorities.[1257] MOFCOM is responsible for imposing penalties on enterprises that do not comply with exportation licence requirements. Exportation of restricted goods without approval, or exportation in excess of a designated quota, is subject to investigation leading to potential criminal and administrative penalties. Penalties include invalidation of applicable licences and suspension or revocation of the right to engage in foreign trade for a period of up to three

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1254. *2008 Export Licence Administration Measures*, Article 30 (Exhibits CHN-342, JE-74). According to this provision, the Ministry of Commerce may adjust the period of validity for certain goods based on "specific circumstances."

1255. *2008 Export Licence Administration Measures*, Article 31 (Exhibits CHN-342, JE-74); *2008 Export Licensing Working Rules*, Articles 17, 18, 19 (Exhibits CHN-344, JE-97).

1256. *2008 Export Licence Administration Measures*, Article 28 (Exhibits CHN-342, JE-74).

1257. *2008 Export Licence Administration Measures*, Articles 4, 5 (Exhibits CHN-342, JE-74); *Measures for Administration of Licensing Entities*, Article 4 (Exhibits CHN-385, JE-75).

years.[1258] MOFCOM also subjects licensing entities to penalties for issuing licences to exporters in excess of a quota, or in cases where no quota is set. Penalties include warnings and suspension or termination of the right to issue licences.[1259] Individuals working in licensing entities who issue licences without approval may also be subject to criminal and administrative penalties, including removal from employment, warning, demotion, and dismissal.[1260] MOFCOM may also punish the forging, altering without approval, buying and selling of export licences.[1261]

7.882 MOFCOM together with China's General Administration of Customs publishes the Catalogue of Goods subject to the Administration of Export Licences,(Export Licensing Catalogue) which lists all goods subject to export restriction.[1262] This catalogue is

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1258. *Foreign Trade Law*, Articles 61, 64 (Exhibit JE-72); *Regulation on Import and Export Administration*, Articles 64, 65 (Exhibit JE-73).

1259. 2008 *Export Licence Administration Measures*, Articles 21, 36, 38 (Exhibits CHN-342, JE-74); *Measures for Administration of Licensing Entities*, Articles 40 (Exhibits CHN-358, JE-75).

1260. 2008 *Export Licence Administration Measures*, Article 42 (Exhibits CHN-342, JE-74) *Measures for Administration of Licensing Entities*, Articles 40 and 41 (Exhibits CHN-358, JE-75).

1261. *Foreign Trade Law*, Articles 34, 63 (Exhibit JE-72); *Regulation on Import and Export Administration*, Article 66 (Exhibit JE-73); *2008 Export Licence Administration Measures*, Article 39 (Exhibits CHN-342, JE-74); *Measures for Administration of Licensing Entities*, Articles 40, 41, 42 (Exhibits CHN-358, JE-75).

1262. *Foreign Trade Law*, Article 18 (Exhibit JE-72); *Regulation on Import and Export Administration*, Article 35

published annually at least 21 days before the list takes effect, which is on 1 January of each year.[1263] MOFCOM approves exportation of goods listed in this catalogue.[1264]

7.883 On 10 December 2008, MOFCOM published the *2009 Export Licensing Catalogue* announcing the catalogue of export-restricted goods for 2009. The list includes the specific forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc that have been identified by the complainants in Exhibit JE-6.[1265]

7.884 Under China's *Export Licence Administration Measures*, enterprises seeking a licence to export

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(Exhibit JE-73), *2008 Export Licence Administration Measures*, Article 3 (Exhibits CHN-342, JE-74).

1263. *Regulation on Import and Export Administration*, Article 35 (Exhibit JE-73), *2008 Export Licence Administration Measures*, Article 3 (Exhibits CHN-342, JE-74).

1264. *Foreign Trade Law*, Article 19 (Exhibit JE-72).

1265. *2009 Export Licensing Catalogue* Notice (Exhibit JE-22); see United States' first written submission, para. 98; European Union's first written submission, para. 168. MOFCOM published *the 2010 Export Licensing Catalogue* announcing the catalogue of export-restricted goods. The list includes the specific forms of bauxite, coke, manganese, silicon carbide and zinc that have been identified by the complainants in Exhibit JE-6, but does not identify fluorspar as subject to export restriction: see *2010 Graded Export Licensing Entities Catalogue* (Exhibit CHN-343). The Panel explained in paragraph 7.763 above that it considers the essence of the *2010 Export Licensing Catalogue* Notice to be different from that of the *2009 Export Licensing Catalogue* Notice with respect to fluorspar and, as a result, does not consider that this Notice falls within its terms of reference.

materials listed in the *2009 Export Licensing Catalogue* are required to submit certain documents. All applicants must submit an application form[1266]; relevant "export quota or other applicable approval documents"[1267]; and either of the Form for Archival Filing and Registration of a Foreign Trade Operator which has been sealed by the archival filing and registration stamp, a Qualification Certificate of Import and Export Enterprises of the People's Republic of China, or a Certificate of Approval for Enterprises with Foreign Investment.[1268]

7.885 In addition, Under Article 11(1) of China's *Export Licence Administration Measures*, for the export of goods subject to the administration of quota licences, applicants must submit "quotagranting documents issued by the Ministry of Commerce or relevant department, and a valid export contract of the applicant. Under Article 11(2), for export goods subject to the administration of quota bidding, applicants must submit "the list of bid-winning Operators", "the bid-winning quantity"; either of the Certificate for the Application of an Export License of Goods subject to Quota Bidding, or the the export contract of the bid-winning Operator. Under Article 11(7), for goods subject to export licensing administration only, applicants are directed to submit "approval documents from the Ministry of Commerce" and a valid export contract.

1266. *2008 Export Licence Administration Measures*, Article 8 (Exhibits CHN-342, JE-74).

1267. *2008 Export Licence Administration Measures*, Article 9 (Exhibits CHN-342, JE-74).

1268. *2008 Export Licence Administration Measures*, Article 10 (Exhibits CHN-342, JE-74).

7.886 Article 5 of *2008 Export Licensing Working Rules*[1269], additionally provides that applicants to export goods subject to export licensing administration only shall submit an application form; "approval documents on export issued by the competent authorities"; a valid export contract; an agency agreement, where the exporter and the consignor are different; and "[o]ther materials that shall be submitted as stipulated by the Ministry of Commerce".

7.887 Enterprises that are subject to export quotas must first be allocated such quotas before they may apply for an export licence.[1270] Applicants that have been allocated such a quota must submit to the appropriate export licence issuing agency the relevant quota allocation certificate issued by the Bidding Committee or Bidding Office, in addition to the documents mentioned in paragraph 7.884 above.[1271]

7.888 In general, an export licence must be issued within three working days from the receipt of a completed application.[1272] China uses three types of export licences.[1273] First, there is the "one licence for one customs

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1269. Exhibits CHN-344, JE-97.

1270. *2008 Export Licence Administration Measures*, Article 21 (Exhibits CHN-342, JE-74).

1271. *2008 Export Licence Administration Measures*, Article 9 (Exhibits CHN-342, JE-74).

1272. *2008 Export Licence Administration Measures*, Article 19 (Exhibits CHN-342, JE-74); *2008 Export Licensing Working Rules*, Article 10 (Exhibits CHN-344, JE-97).

1273. *2008 Export Licence Administration Measures*, Article 22 (Exhibits CHN-342, JE-74).

house" export licence, which is used to export goods from a specific customs house. Second there is the "one batch, one license" export licence, which is used for customs declaration only once within their period of validity. Third, there is the "non-one batch, one license" export licence, which is used for customs declaration up to twelve times within their period of validity. Customs houses are required to indicate the respective quantity of outbound cargo on the customs release form when presented with an export licence. China issues "non-one batch, one license" types to foreign enterprises[1274] as well as for goods in the Catalogue for Goods Subject to the Administration of Export Licenses.[1275]

7.889 Article 8 of the *2008 Export Licensing Working Rules*[1276] instructs export licensing agencies to examine: (i) whether an operator has the "qualifications" to operate the business; (ii) whether the "export approval documents submitted by the operator are complete and valid"; (iii) whether the applicant has submitted a complete and accurate "application" that is "consistent with the relevant provisions of the administration of export goods and licenses, the contents of the export approval documents and the export contract"; and (iv) whether the "other materials that need to be submitted are consistent with relevant provisions". The export licensing agency is

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1274. *2009 Export Licensing Catalogue*, Article VII (Exhibit JE-22).

1275. *2008 Export Licence Administration Measures*, Article 22 (Exhibits CHN-342, JE-74).

1276. Exhibits CHN-344, JE-97.

directed to issue the corresponding export licences if it is satisfied that these conditions are met.[1277]

7.890 China has indicated that its *Foreign Trade Law* is a "legislative act that delegates (through the State Council) to MOFCOM, an executive branch agency, implementing authority, *inter alia* (1) to specify the products subject to export quota and export licensing requirements, and (2) to adopt implementing rules concerning the grant of export licenses".[1278] The Appellate Body confirmed that "any act or omission attributable to a WTO Member can be a measure of that Member for purposes of dispute settlement proceedings."[1279] In light of China's explanation, and in the absence of any assertion that the measures discussed above are not attributable to China, the Panel will consider these measures to be measures of China for purposes of its analysis.

2. Whether China's export licensing system on certain forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc is inconsistent with Article XI:1 of the GATT 1994

7.891 The complainants allege that China's export licensing system, as applied to bauxite, coke, fluorspar, manganese, silicon carbide and zinc under the *2009*

1277. *2008 Export Licensing Working Rules*, Article 9 (Exhibit CHN-344, JE-97).

1278. China's response to question No. 2 from the European Union, para. 279.

1279. Appellate Body Report, *US – Corrosion Resistant Steel Sunset Reviews*, para. 81.

Export Licensing Catalogue, is both "non-automatic" and "discretionary" and, therefore, is inconsistent with GATT Article XI:1.

7.892 Article XI of the GATT 1994 provides:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

7.893 Thus, Article XI:1 forbids import and export restrictions or prohibitions, including those "made effective through ... export licences."

7.894 The Appellate Body has not yet been required to consider the meaning of "restrictions" in Article XI:1. Some panels, however, have done so. In *Colombia – Ports of Entry*, after reviewing several GATT and WTO cases, the panel concluded that "restrictions" in the sense contemplated by Article XI:1 refers to measures that create uncertainties and affect investment plans, restrict market access for imports, or make importation prohibitively costly.[1280] The panel in that dispute considered Article XI:1 in the context of measures that restricted access to ports of entry for goods being imported from Panama.

1280. Panel Report, *Colombia – Ports of Entry*, para. 7.240.

7.895 In the context of import licensing, the panel in *India – Quantitative Restrictions* concluded that the scope of the term "restriction" is "broad" and, in terms of its ordinary meaning, is "a limitation on action, a limiting condition or regulation."[1281] The panel thereafter concluded that "a discretionary or non-automatic import licensing requirement is a restriction prohibited by Article XI:1."[1282] The panel in *India – Autos* similarly endorsed a broad interpretation of the term "restriction", concluding that Article XI:1 applies to conditions that are "limiting' or have a "limiting effect ... on importation itself".[1283]

7.896 While these reports shed light on the meaning of "restriction", the Panel considers it useful to undertake a further review of Article XI:1 in order to assess its applicability to export licensing, including export licensing requirements that may be considered "non-automatic" or "discretionary". Although the panel in *India – Quantitative Restrictions* opined that a "discretionary or non-automatic import licensing requirement" is a restriction, the panel in *India – Quantitative Restrictions* did not distinguish between "non-automatic" and

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1281. Panel Report, *India – Quantitative Restrictions*, para. 5.128.

1282. Panel Report, *India – Quantitative Restrictions*, para. 5.129.

1283. Panel Report, *India – Autos*, para. 7.270. Several WTO panels have cited with approval this interpretation of the term "restrictions" in Article XI:1: see Panel Report, *Colombia – Ports of Entry*, paras. 7.233-7.234; Panel Report, *Brazil – Retreaded Tyres*, para. 7.371; Panel Report, *Dominican Republic – Import and Sale of Cigarettes*, paras. 7.252 and 7.258.

"discretionary" licensing systems or explain potential differences in the meanings of these terms.[1284] That panel ultimately found that the particular licensing requirement at issue was a "discretionary import licensing system" where "licences are not granted in all cases, but rather on unspecified merits".[1285] The Panel does not find in the reasoning articulated by that panel a specific explanation of why "non-automatic" licensing systems are prohibited under Article XI:1 that would assist us here.

7.897 The Panel will first consider this general issue and thereafter will consider China's export licensing system in light of its determination on the scope of GATT Article XI:1.

(a) "Non-automatic" or "discretionary" export licensing under Article XI:1 of the GATT 1994

7.898 The complainants submit that Article XI:1 prohibits "non-automatic" export licensing requirements. In other words, the complainants contend that export licensing requirements that accord licensing authorities "discretionary" authority in determining whether to grant an export licence to a particular applicant are prohibited under Article XI:1.

7.899 The United States and Mexico point out that Article XI:1 expressly identifies export licences as a type

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1284. Panel Report, *India – Quantitative Restrictions*, para. 5.129, 5.137.

1285. Panel Report, *India – Quantitative Restrictions*, para. 5.130.

of measure that can restrict exportation.[1286] The United States adds as well that Article XI:1 "qualifies its ban on restrictions" by explicitly *excluding* from its scope duties, taxes or other charges. According to the United States, this demonstrates that the restrictions that fall *within* the scope of Article XI:1 include other types of restrictions imposed on exportation. It notes further that GATT and WTO panels have interpreted Article XI:1 to cover restrictions other than just "quantitative" restrictions.[1287] The United States and Mexico submit, in particular, that the panel in *India – Quantitative Restrictions* concluded that a "discretionary or non-automatic import licensing requirement" is a "restriction" that is prohibited by Article XI:1.[1288]

7.900 The European Union submits that "[i]t is generally accepted that an import or export licensing requirement falls within the scope of Article XI when it is 'discretionary or non-automatic'".[1289] It argues that Article XI:1 has been found broadly to protect trading and competitive opportunities for both Members

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1286. United States' first written submission, paras. 332-333; Mexico's first written submission, paras. 334-335.

1287. United States' opening oral statement at the second substantive meeting, para. 124.

1288. United States' first written submission, paras 341; Mexico's first written submission, paras 344, referring to Panel Report, *India – Quantitative Restrictions*, para. 5.129.

1289. European Union's first written submission, para. 316.

and traders.[1290] The European Union contends that a discretionary export licensing system "by its very nature limits such opportunities because certain exports may not be permitted".[1291]

7.901 China submits that Article XI:1 should not be construed broadly to prohibit all forms of export licensing. China argues that Article XI:1 does not prohibit Members from imposing any and all regulatory conditions on exportation; rather it prohibits the imposition of certain conditions, namely those that have a "limiting effect" on the quantity of exports.[1292] China submits that a complainant must prove that although a measure such as a licensing requirement does not contain any express restriction on exportation, it functions to restrict exports.[1293]

7.902 China submits that not all types of licences have a "limiting effect" on the quantity of imports or exports and therefore not all licences are inconsistent with Article XI:1. For instance, China contends that a licence that is issued "automatically" has no limiting effect and is therefore permissible.[1294] Relying on the ordinary meaning of "automatic" and the definition of "automatic" licensing in the Import Licensing Agreement, China

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1290. European Union's second written submission, paras. 90 and 103.

1291. European Union's second written submission, para. 90.

1292. China's first written submission, paras. 748-752; China's second written submission, paras. 482-484.

1293. China's first written submission, para. 752.

1294. China's first written submission, para. 753.

submits that licensing is "automatic" and consequently should not be prohibited if the export licence is issued in all cases, where preestablished conditions are met.[1295]

7.903 According to China, Article 1.1 of the Import Licensing Agreement confirms that the mere requirement to submit a valid and complete application or other documentation as a condition to receive a licence is not sufficient to render a licensing requirement a restriction on the quantity of exports and hence inconsistent with Article XI:1.[1296]

7.904 China submits that criteria set out in Article 2 of the Import Licensing Agreement support the view that licensing may be "automatic" and thus permissible. According to China, automatic licensing in this context includes situations where a licensing agency has no right to refuse issuance of an export licence, upon submission of enumerated application documents; when licences are issued "regularly" upon receipt of the relevant and completed application; when a licence application procedure is "accessible"; and when the time taken for issuance is not too long.[1297]

7.905 China argues that even when a licence may not be considered "automatic" based on these factors, a licence should nevertheless not be presumed to restrict

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1295. China's first written submission, paras. 754, 755.

1296. China's first written submission, paras. 758-759; China's second written submission, paras. 488-489.

1297. China's first written submission, paras. 754, 756 referring to Import Licensing Agreement, Article 2.2(a).

the quantity of exports *per se* in a way that would violate Article XI:1. In this respect, China submits that Article 3.2 of the Import Licensing Agreement clarifies that licences that are not "automatic" within the meaning of Article 2 of the Import Licensing Agreement should not be prohibited, so long as they are not more "trade-restrictive" or "trade-distortive", or "burdensome" than necessary to administer the measure. These licences would be considered "non-automatic" but are nevertheless WTO-permissible, in its view. According to China, if a non-automatic licence does not "limit the quantity of imports or exports", it is not WTO-inconsistent.[1298]

7.906 More broadly, China argues that where a measure does not expressly or necessarily provide for WTO-inconsistent conduct, the discretion to apply the rule in a WTO-inconsistent manner is insufficient to render the measure WTO-inconsistent. China argues that it should be presumed to act in good faith with its obligations.[1299] Thus, China argues, the absence of any explicit limitation on this discretion does not render an export licence non-automatic in such a way as to have a limiting effect on the quantity of exports.

(i) Import and export licensing under Article XI:1 of the GATT 1994

7.907 The Panel recalls, as set out above, that Article XI:1 of the GATT 1994 forbids "import and export restrictions or prohibitions made effective through ... export licences". Duties, taxes or other charges are explicitly excluded as

1298. China's second written submission, para. 487.

1299. China's first written submission, paras. 803-804.

types of "restrictions or "prohibitions" that fall within the scope of Article XI:1.

7.908 It is useful to bear in mind that import or export prohibitions or restrictions may be permitted or justified under other provisions, such as Articles XI:2, XII, XVIII, XIX, XX and XXI of the GATT 1994. Restrictions permitted under these provisions may be implemented through, e.g., a licensing regime. Article XIII of the GATT 1994 sets out rules for the administration of such restrictions. In the context of import licensing, the Import Licensing Agreement clarifies rules for import licensing procedures.

7.909 China, as well as the Kingdom of Saudi Arabia[1300], as a Third Party, submit that the Import Licensing Agreement provides useful context to inform which licensing requirements may be permitted under Article XI:1.[1301] In China's view, the Import Licensing Agreement makes clear that licensing is permissible, regardless of a label assigned to it, "if the export license is issued in all cases, provided pre-established conditions are met".[1302] Even if a licence falls into the residual category of "non-automatic" licensing set out in Article 3.2 of the Import Licensing Agreement, according to China, that license procedure is not WTO-inconsistent, so long as it does not "limit the quantity of imports or exports".[1303]

1300. Third party written submission of Kingdom of Saudi Arabia, paras. 17-27.

1301. See, e.g., China's response to Panel question No. 66 following the second substantive meeting, para. 337, fn. 392.

1302. China's first written submission, para. 754.

1303. China's second written submission, para. 487.

7.910 Saudi Arabia does not consider an export licensing system to be "automatic" where its application requirements include or enforce export conditions, such as an export quota.[1304] Nevertheless, it agrees with China that the presence of an application process does not necessarily render an export licensing system "non-automatic" or *per se* WTO-inconsistent.

7.911 We agree with China and Saudi Arabia that the Import Licensing Agreement informs the meaning of the terms "automatic" and "non-automatic" (as a residual category of "automatic" licenses) in the context of import licensing systems. However, that Agreement does not address *export* licensing systems. Nor for that matter does it set out in precise terms which *import* licences would be WTO-inconsistent, although it does provide that import licences should be in conformity with all "relevant" provisions of the GATT 1994 "as interpreted by [the Import Licensing Agreement]".[1305] Hence, the Panel considers that the Import Licensing Agreement itself provides only limited assistance in the task of interpreting Article XI:1.

1304. Third party written submission of Kingdom of Saudi Arabia, para. 18.

1305. Article 1.2 of the Import Licensing Agreement provides: "Members shall ensure that the administrative procedures used to implement import licensing regimes are in conformity with the relevant provisions of GATT 1994 including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures".

7.912 The Appellate Body has indicated that the title of a provision may be useful in defining its objective.[1306] The Panel notes the title of Article XI:1 – "General Elimination of Quantitative Restrictions" suggests that the provision is intended to govern elimination of quantitative restrictions generally. While relevant, the Panel's interpretative task does not of course end with the title. To determine the scope and meaning of Article XI:1, the Panel needs to consider the particular terms of the provision.

7.913 Article XI:1 by its terms prohibits restrictions or prohibitions that are made effective through a variety of means not solely through a category of measures that may be considered formal quantitative restrictions, such as a quota. Article XI:1 also prohibits restrictions effected through export licenses, as well as an unqualified category of "other measures". In the Panel's view, the fact that the title uses the term "quantitative restrictions" does not change the fact that a broad category of "other measures" falls within the scope of Article XI:1.

7.914 The Panel's view is consistent with findings of other GATT and WTO panels that types of measures "other" than quotas, import or export licences, duties, taxes or charges that have a "limiting effect" or impose a "limiting condition" are prohibited under Article XI:1.[1307] Panels have assessed such measures by examining their design and structure to determine whether they have a "limiting" or "restrictive" effect.[1308]

1306. Appellate Body Report, *US – Softwood Lumber IV*, para. 93; Appellate Body Report, *US – Carbon Steel*, para. 67.

1307. See, e.g., discussion in paragraphs 7.205-7.206 above.

1308. Panel Report, *India – Autos*, paras. 7.266-7.268; Panel Report, *Colombia – Ports of Entry*, para. 7.252.

7.915 The Panel will adopt a similar analytical approach. The Panel sees no merit in seeking to determine whether or not a measure is permissible under Article XI:1 based solely on its label. In other words, the Panel does not find useful for its analysis here whether a measure is categorized as an "automatic" or "non-automatic" licence. Indeed, the obligation set forth in Article XI:1 does not distinguish between types of import or export licences that would be prohibited, be they automatic, non-automatic or discretionary. Rather, it concerns "prohibitions or restrictions" including those "made effective through ... import or export licenses". Hence, our analysis will examine the design and structure of the licence to determine if it has a "limiting" or "restrictive" effect.

7.916 Setting aside the use of a particular label or nomenclature for a licence, the Panel considers that a licensing system that operates such that a licence to import or export is granted upon application to each and every applicant would not run afoul of Article XI:1. This is because such a system does not imply any restriction or limiting effect on importation or exportation in connection with the application and granting of the licence. An example of such a system is one that is designed to gather statistical information or for monitoring purposes, but presents no impediment to obtaining the licence as it is granted in every case.

7.917 The Panel also considers that requiring an applicant to satisfy a certain prerequisite before being granted an import or export licence would not necessarily offend Article XI:1. The requirement to satisfy a prerequisite would be prohibited under Article XI:1 only if the

prerequisite itself created a restriction or limiting effect on importation or exportation. For example, if a licensing system is maintained in order to administer an import quota that is authorized under the GATT 1994, requiring the applicant to submit a particular document attesting to an applicant's right to import quota in order to receive the licence is unlikely to constitute a violation of Article XI:1. This is because the requirement to submit the document does not effect any restriction or impose a limiting effect on importation; the restriction on importation is the quota itself. A different conclusion could obtain, however, if the prerequisite were of a different nature.

7.918 Therefore, the Panel concludes that import and export licences, including those granted only upon meeting a certain prerequisite, may be, but are not necessarily, permissible under Article XI:1; the key is whether the licensing system is designed and operates such that by its nature it does not have a restrictive or limiting effect on importation or exportation. If it meets this test, it will not offend Article XI:1 of the GATT 1994.

(ii) Discretionary licensing requirements

7.919 Before turning to examine China's export licensing system, we should address discretionary licensing requirements.

7.920 As noted above, the panel in *India – Quantitative Restrictions* found that the particular licensing requirement at issue was a "discretionary import licensing system" where "licences are not granted in all cases, but rather on unspecified merits", and was therefore WTO-

inconsistent.[1309] The panel in *Turkey – Rice* considered that whether a licensing practice is "discretionary" depends on the freedom of the administering authority to grant or reject an import licence.[1310] The panel in *China – Publications and Audiovisual Products* similarly found that a measure was "discretionary" because the implementing authority had "the freedom to choose, based essentially on its own preference, whether or not such rights are granted".[1311]

7.921 It seems to the Panel that if a licensing system is designed such that a licensing agency has discretion to grant or deny a licence based on unspecified criteria, this would not meet the test we set out above in order to be permissible under Article XI:1. The possibility to deny the licence would be ever present; hence, the system by its very nature would always have a restrictive or limiting effect. It makes no difference, in the Panel's view, that discretion may be applied in a particular case such that a licence is authorized. The system offers no certainty that licences will be granted and hence it is not permissible.

7.922 With this in mind, the Panel will next consider whether China's export licensing system for the forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc at issue is inconsistent with Article XI:1. In doing so, the Panel recalls China's argument that, where a measure

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1309. Panel Report, *India – Quantitative Restrictions*, para. 5.130.

1310. Panel Report, *Turkey – Rice*, paras. 7.128, 7.134.

1311. Panel Report, *China – Publications and Audiovisual Products*, para. 7.324.

does not expressly provide for WTO-inconsistent conduct, the discretion to apply the rule in a WTO-inconsistent manner is insufficient to render the measure WTO-inconsistent.[1312] The Panel explained above that it will examine the design and structure of the measure at issue it making its assessment.

(b) China's export licensing system for the forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc

7.923 The complainants allege that China's export licensing system, as applied to the forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc under the *2009 Export Licensing Catalogue*, is inconsistent with Article XI:1 because it is "non-automatic" and because it provides China's export licensing agencies with discretion to restrict exportation of these materials.

7.924 The complainants argue that Article 19 of China's *Foreign Trade Law* imposes a "nonautomatic" licence requirement for specified goods that are "subject to export restriction". They distinguish this alleged "non-automatic" requirement from an "automatic" licence requirement that is implemented for "freely exported goods" under Article 15 of China's *Foreign Trade Law* for "monitoring purposes".

7.925 The United States and Mexico submit that regulation of export licences under the provisions of Article 19 is "non-automatic" by its nature.[1313] They argue

1312. China's first written submission, paras. 803-804.

1313. United States' first written submission, paras. 338-

that licensing agencies may exercise discretion and impose conditions on the granting of licences to set the quantities of goods that can be exported. Conditions include requiring "undefined 'documents of approval' and 'other materials to be submitted' as bases for issuance of export licenses".[1314] The United States and Mexico submit that China has itself conceded that its export licensing system amounts to an export restriction under GATT Article XI:1 through its notification to the WTO Committee on Market Access in 2006 and 2007 that its licence requirements are a "quantitative restriction" justified pursuant to Article XI and XX of the GATT 1994.[1315]

7.92 The European Union argues that a logical interpretation of Articles 15 and 19 of China's *Foreign Trade Law* leads to the conclusion that export licences imposed on goods subject to restriction under Article 19 are not "automatic" by operation of law.[1316] The European Union cites references in the *Regulation*

339, 342.

1314. United States' first written submission, para. 340, fn. 415; Mexico's first written submission, para. 343, fn. 415.

1315. United States' second written submission, para. 378 and Mexico's second written submission, para. 383, referring to Committee on Market Access, Note by the Secretariat: Notifications of Quantitative Restrictions G/MA/NTM/QR/1Add.11 (11 April 2008) (Exhibit JE-171); *Catalogue of Products Subject to Export (Quota) License (2007 QRs of China final)* (Exhibit JE-172)).

1316. European Union's opening oral statement at the first substantive meeting, para. 9.

on Import and Export Administration[1317] to goods "prohibited from exportation" and goods "limited in exportation"[1318], including those goods that are "subject to the administration of licenses".[1319] It submits that these goods are subject to non-automatic export licenses.[1320] The European Union contends that Articles 16, 17 and 18 of China's *Foreign Trade Law*, which set out conditions that must be met and procedures that must be followed in order for a good to be declared as "restricted or forbidden from export", confirm that China mandates its authorities to treat Article 19 export licences as non-automatic.[1321]

7.927 The European Union also argues that the non-automatic nature of the licences is made clear from the text of Notices that China publishes annually announcing the "list of goods that are submitted to export license management".[1322] In respect of goods subject to export licensing administration only, the European Union additionally contends that China's export licensing system is inconsistent with Article XI:1 because it "allows China's authorities a very broad and unfettered

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1317. *Regulation on Import and Export Administration* (Exhibit CHN-152, Exhibit JE-73).

1318. *Regulation on Import and Export Administration*, Articles 33 and 35 (Exhibit CHN-152, Exhibit JE-73).

1319. *Regulation on Import and Export Administration*, Article 43 (Exhibit CHN-152, Exhibit JE-73).

1320. European Union's first written submission, para. 317.

1321. European Union's second written submission, para. 64.

1322. European Union's first written submission, para. 317, referring to Notice 100/2008 (Exhibit JE-22).

discretion on whether to grant or refuse export licenses to applicants".[1323] Specifically, the European Union argues that China's export licence agencies may require, under Article 5(5) of China's *2008 Export Licensing Working Rules*, undefined "other documents" prescribed by the Ministry of Commerce for some applicants but not others, or to require documents during certain times but not others.[1324] The European Union argues that there is no proof of limitation of discretion to require documents. If there were no discretion, it argues, the export licence would always be issued for the entire quantity requested based on the export contract. In addition, the European Union submits that China's export licensing agencies, under Article 11(7) of China's *2008 Export Licence Administration Measures*, have discretion to require undefined "documents of approval of the Ministry of Commerce".[1325] The European Union argues that the discretion inherent in these criteria allows China's export licence authorities to restrict, or altogether ban, exportation by certain companies or individuals.[1326]

1323. European Union's first written submission, para. 319.

1324. European Union's first written submission, para. 319; European Union's second written submission, para. 69, referring to *2008 Export Licensing Working Rules*, Article 5.5 (Exhibits CHN-344, JE-97). China submits that the correct interpretation is "other materials that shall be submitted as stipulated by the Ministry of Commerce." China's second written submission, para. 509.

1325. European Union's first written submission, para. 321; *Measures for Administration of Licensing Entities*, Article 11.7 (Exhibits CHN-358, JE-75).

1326. European Union's first written submission, paras. 319, 321; European Union's second written submission, para. 98.

7.928 China disputes the complainants' claims that its export licence regime is inconsistent with GATT Article XI:1 due to references to the term "restriction" in provisions of its law. It considers that the label applied to its export licence system does not determine a violation of Article XI:1.[1327] China similarly rejects that export licence issuing agencies enjoy discretion in granting an export licence, including discretion to determine the quantity that an applicant may export.[1328] China submits that requiring documentation as a condition for receipt of a licence does not convert an otherwise valid licence requirement into a prohibited restriction on the quantity of exports.[1329]

7.929 Under applicable Chinese law, China contends that export licences for bauxite, coke, manganese, silicon carbide and zinc are automatically granted in all cases, and within three days, provided that a valid and complete set of documents is submitted with the application.[1330] In two official statements issued by the Quota & License Administrative Bureau of MOFCOM, dated 20 July 2010 and 11 November 2010 respectively (Exhibit CHN-345 and Exhibit CHN-529), China specifies which documents are required to receive an export licence in the case of: (i) goods subject to quotas directly allocated, (ii)

1327. China's first written submission, para. 762, referring to Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 87, fn. 87; China's second written submission, para. 497.

1328. China's first written submission, para. 798.

1329. China's first written submission, paras. 758-759, 800.

1330. China's first written submission, paras. 771, 776; China's second written submission, para. 499.

goods subject to quota bidding, and (iii) manganese and unwrought zinc, which are not subject to quotas but are subject to export licensing requirements.[1331] China argues that full details on the required documents and steps to acquire a licence appear in Articles 8 to 10 of its *2008 Export Licence Administration Measures*[1332], and Article 9 of the *2008 Export Licensing Working Rules*.[1333] China submits that the *2008 Export Licensing Working Rules*

1331. China's first written submission, paras. 773-774. For goods subject to quota licence administration, China submits that an applicant must submit: (a) an application form; (b) the Form for Archival Filing and Registration of a Foreign Trade Operator or the Qualification Certificate of Import and Export Enterprises or the Certificate of Approval for Foreign-Invested Enterprises; (c) the "quota-granting documents issued by relevant authorities"; and (d) the export contract. For goods subject to quota bidding, China submits that an applicant must submit: (a) an application form; (b) the Form for Archival Filing and Registration of a Foreign Trade Operator or the Qualification Certificate of Import and Export Enterprises or the Certificate of Approval for Foreign-Invested Enterprises; (c) the list of bid-winning operators and the bid-winning quantity announced; (d) the Certificate for the Application of an Export License of Goods subject to Quota Bidding or the Certificate for Transfer of Goods Subject to Quota Bidding; and (e) the export contract of the bid-winning operator. China submits that applicants wishing to export manganese and unwrought zinc must submit: (a) an application form; (b) Form for Archival Filing and Registration of a Foreign Trade Operator or the Qualification Certificate of Import and Export Enterprises or the Certificate of Approval for Foreign-Invested Enterprises; and (c) an export contract. China argues this is confirmed under the *2010 Export Licensing Catalogue*.

1332. China's first written submission, para. 775.

1333. China's first written submission, para. 777.

do not implement the *Measures for the Administration for the Export of Goods*; instead, they are an "internal guide for the personnel of the licence-issuing authorities on the applicable rules governing the issuance of export licences".[1334]

7.930 Article 11(7) of the *Measures for the Administration of Licenses for the Export of Goods* applies to goods that are not subject to quotas but are subject to export licensing requirements. For submits that the *2010 Export Licensing Catalogue* includes a notation in its Appendix 1 that export licences for these products will be "applied for and granted" upon presentation of an export contract in the 2010 *Catalogue*. China argues that, as a matter of Chinese law, this constitutes an "approval" by MOFCOM within the meaning of Article 11.7.[1335] Finally, China submits that the European Union has not provided any examples in which an applicant was required to provide documents other than those specified in the *2008 Export Licence Administration Measures*. Accordingly, it requests the Panel to reject the European Union's claim on these aspects.[1336]

1334. China's opening oral statement at the second substantive meeting, para. 355; see also China's response to Panel question Nos. 22 and 23 following the first substantive meeting paras 113-117.

1335. China's first written submission, para. 822, footnote 1166. See also China's first written submission, para. 817, footnote 1160, para. 773, footnote 1106 and para. 796, footnote 1138, China's response to question No. 2 from the European Union following the first substantive meeting, para. 285; China's second written submission, para. 544, footnotes 734 and 737.

1336. In its opening oral statement at the second substantive meeting (paras. 362 and 363), China submits that the European

7.931 In respect of goods subject to export licensing administration only, the European Union submits that the Panel may wish to accept in good faith official statements issued in 2010 by the Quota & License Administrative Bureau of MOFCOM (Exhibit CHN-345 and Exhibit CHN-529) that export licensing agencies do not exercise discretion to grant export licences.[1337] It accepts that the Panel may incorporate these statements in its final Reports to the DSB and attribute legal importance to them to achieve a positive solution to the dispute.[1338] If it were to do so, the European Union requests the Panel to state the consequence were China to repudiate these statements.[1339] The European Union cautions as well that the Panel cannot accept such a statement where it would amount to "an administrative promise to disregard the defending Member's own binding internal legislation, i.e., by an administrative undertaking to act illegally".[1340]

Union additionally claims that China's power to amend the list of documents required to support an application is inconsistent with GATT Article XI:1. The European Union indicated it was not making such a claim in response to Panel question No. 62 following the second substantive meeting paras. 85-86. Accordingly, the Panel does not consider further this argument by China.

1337. European Union's second written submission, para. 55; European Union's opening oral statement at the first substantive meeting, para. 6.

1338. European Union's opening oral statement at the first substantive meeting, para. 6; European Union's second written submission, para. 73.

1339. European Union's second written submission, para. 73.

1340. Panel Report, *US – Section 301 Trade Act*, para. 7.103.

7.932 The European Union, however, disputes that Article 11 of the *2008 Export Licence Administration Measures* determines the relevant documents, thereby removing all discretion. The European Union submits that Article 5 of the *2008 Working Rules on Export Licenses*, as implementing measures of the *2008 Export Licence Administration Measures*, refers to documents that are not mentioned in the *2008 Export Licence Administration Measures*.[1341] It submits that the *2008 Export Licensing Working Rules* include undefined terms.[1342] The European Union also notes that Article 9 of the *2008 Export Licensing Working Rules* comes into play only after the authorities have concluded that the "applications conform to the regulations".[1343]

7.933 Finally, the European Union disputes the relevance of the note in the appendix of the *2010 Export Licensing Catalogue* and related official statement dated 11 November 2010 (Exhibit CHN-529), which specifies that export licences are to be issued on the basis of export contracts alone for goods not subject to an export quota, notably manganese and unwrought zinc. The European Union submits that the *2010 Export Licensing Catalogue* leaves MOFCOM with discretion to issue documents of approval limiting the quantities of manganese and unwrought zinc that may be exported. In addition, it argues that future versions of the annual Catalogue of Goods Subject to Export Licensing Administration may

1341. European Union's second written submission, para. 76.

1342. European Union's second written submission, para. 75.

1343. European Union's second written submission, para. 85.

not permit the granting of a licence on the basis of export contracts alone.[1344] Absent modification or repeal of the Export Licensing Measures, the European Union argues that China has not removed the discretion enjoyed under this provision.[1345]

7.934 The Panel first recalls its conclusion in paragraph 7.918 above that export licences are not *per se* inconsistent with GATT Article XI:1. In particular, the Panel found that licensing conditions may be imposed in licensing systems that are themselves justified pursuant to a provision of the WTO Agreement, such as GATT Articles XI:2, XII, XVIII, XIX, XX and XXI provided they do not by their nature have a restrictive or limiting effect.

7.935 Under the provisions in China's law identified by the complainants, certain goods are subject to export restriction (under Article 19 of *China's Foreign Trade Law*), while other goods are not (under Article 15 of *China's Foreign Trade Law*). In the Panel's view, the fact that goods subject to export restriction are in turn subject to a licensing requirement is not sufficient to establish that such a requirement is impermissible under GATT Article XI:1. As stated, prerequisites may be imposed in licensing systems that implement a permitted restriction. Hence, the inquiry as to whether or not a licence requirement is or is not permissible under Article XI:1 does not end at the text of the measure imposing the licensing requirement. It is necessary to determine if there is a restrictive or limiting effect.

1344. European Union's second written submission, para. 93.

1345. European Union's second written submission, para. 95.

7.936 It is possible that license requirements for certain goods eligible for export under Article 19 of *China's Foreign Trade Law* may in fact be justified. There is also no evidence before us indicating that the measures must necessarily be applied in such a way as to impose any restriction additional to that arising from the underlying restriction. As explained in paragraph 7.917 above, in the Panel's view, the mere requirement to submit an application or documentation as a condition to obtain a licence to export does not on its own necessarily rise to the level of a restriction under Article XI:1.

7.937 Articles 16, 17 and 18 of *China's Foreign Trade Law* do not on their face indicate that a particular licence requirement is to be imposed in such a way as to impose any additional limiting or restrictive effect. Articles 16 and 17 set out reasons for which China may restrict or ban the export of particular goods, including for numerous reasons similar to those set out in GATT Articles XX and XXI. The measures do not indicate on their face, and the complainants have not submitted any evidence to prove, that export licensing applied in conformity with the rationale in Articles 16 and 17 of *China's Foreign Trade Law* imposes additional restrictions to that which may arise from the underlying measure.

7.938 Accordingly, for the reasons set out above, the Panel does not agree with the complainants that China's export licensing requirement imposed on certain forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc is inconsistent with Article XI:1 simply because a licence requirement is applied to "goods subject to ... export restrictions". In the Panel's view, GATT Article XI:1 does not support such a conclusion.

7.939 The Panel will next address the additional claim that China's export licensing requirement is inconsistent with Article XI:1 because China's export licensing agencies exercise discretion in deciding whether to grant export licences to applicants to export bauxite, coke, fluorspar, manganese, silicon carbide and zinc.

7.940 The Panel explained in paragraph 7.919 above that an additional restriction sufficient to violate Article XI:1 could arise where a licensing agency exercises discretion in its decision to grant an export licence.

7.941 The arguments of the parties turn on whether there is a exhaustive list of the particular documents that are required to receive an export licence. As discussed in paragraph 7.929 above, China submits that there is an all-inclusive definitive list of materials that must be submitted, in the case of goods subject to quota licence administration, goods subject to quota bidding, and lastly, those goods subject to an export licensing requirement only, namely the forms of manganese and unwrought zinc at issue in this dispute. China contends that for goods subject to quota licence administration, an applicant must submit: (i) an application form; (ii) a form demonstrating that the applicant is registered and authorized to export[1346]; (iii) evidence that the applicant is one of the enterprises granted a quota share; and (iv) an export contract.

1346. To satisfy this requirement, an applicant must submit either the Form for Archival Filing and Registration of a Foreign Trade Operator; the Qualification Certificate of Import and Export Enterprises; or the Certificate of Approval for Foreign-Invested Enterprises.

7.942 For goods subject to quota bidding, an applicant must submit: (i) an application form; (ii) a form demonstrating that the applicant is registered and authorized to export[1347]; (iii) evidence that the applicant is one of the export quota bid winners; (iv) a Certificate for the Application of an Export License of Goods subject to Quota Bidding or a Certificate for Transfer of Goods Subject to Quota Bidding; and (v) an export contract of the bid-winning operator.

7.943 In respect of manganese and unwrought zinc that are subject to export licensing administration only, under the *2010 Export Licensing Catalogue*, applicants seeking to export must submit: (i) an application form; (ii) a form demonstrating that the applicant is registered and authorized to export[1348]; and (iii) an export contract. Appendix 1 of the *2010 Export Licensing Catalogue* indicates that an applicant is only required to present an export contract to obtain an export licence.[1349] Effectively, as clarified in statements by the Quota &

1347. To satisfy this requirement, an applicant must submit either the Form for Archival Filing and Registration of a Foreign Trade Operator; the Qualification Certificate of Import and Export Enterprises; or the Certificate of Approval for Foreign-Invested Enterprises.

1348. To satisfy this requirement, an applicant must submit either the Form for Archival Filing and Registration of a Foreign Trade Operator; the Qualification Certificate of Import and Export Enterprises; or the Certificate of Approval for Foreign-Invested Enterprises.

1349. China's first written submission, para. 796, fn 1138.

License Administrative Bureau of MOFCOM[1350], China has suspended the requirement for an applicant to submit any other documents of approval in 2010 in order to obtain a licence to export either manganese or unwrought zinc.

7.944 The Panel does not question China's position as confirmed in statements by the Quota & License Administrative Bureau of MOFCOM (Exhibits CHN-345 and CHN-529) that China does not require materials in addition to these enumerated documents. However, the Panel observes that Article 11(7) of *2008 Export Licence Administration Measures* and Article 5(2) and 8(2) of *China's Working Rules on Export Licenses* also refer to a requirement to submit undefined "other documents of approval". In addition, Articles 5(5) and 8(4) of *China's Working Rules on Export Licenses* refer to undefined "other materials" as required by the Ministry of Commerce.

7.945 The Panel accepts that the reference to "other documents of approval" in Article 9, and "documents of approval for export" in Article 12 of China's *2008 Export Licence Administration Measures* refer to the documents enumerated in the subparagraphs of Article 11 of the *2008 Export Licence Administration Measures*. Further, the Panel understands the reference to "documents of approval" in Articles 5(2) and 8(2) of China's Working Rules on Export Licenses to refer to these same documents.

7.946 However, the Panel does not understand the reference to "documents of approval" in Article 11(7) of the *2008 Export Licence Administration Measures*, as

1350. Exhibit CHN-345 and Exhibit CHN-529.

applicable to goods subject to export licensing only, or the "other materials" in Articles 5(5) and 8(4) of the *2008 Export Licensing Working Rules*, applicable generally, to refer to any enumerated documents. As argued by the complainants, this unspecific language leaves open the possibility of expanding or modifying the documents or materials that may be required to receive an export licence. Thus, it is unclear whether additional documents will be required from a particular applicant in order to satisfy the requirement to submit a complete and accurate application in accordance with Article 12 of China's *2008 Export Licence Administration Measures*, or Article 10 of China's *Working Rules on Export Licenses*. In the Panel's view, these undefined requirements operate so as to leave Chinese License Authorities with open-ended discretion to restrict or prohibit the exportation of the subject raw materials.[1351]

7.947 China considers that, where a measure does not expressly or necessarily provide for WTOinconsistent conduct, any discretion to apply the rule in a WTO-inconsistent manner is insufficient to render the measure

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1351. The Panel foresees the possibility that other evidence or documents may be desirable or necessary, in certain circumstances, to approve the authorization of an enterprise to export. For instance, Article 11(5) of China's *2008 Export Licence Administration Measures* provides that the exportation of chemicals under supervision and control requires an applicant to submit documents of approval to the Office of State Leading Group for the Performance of the Convention on Prohibition of Chemical Weapons. However, this would be a specific requirement and thus different from an undefined requirement.

WTO-inconsistent.[1352] In view of that, China argues that the absence of any explicit limitation on this discretion in these measures does not render an export licence a licence that restricts exportation and thus prohibited under Article XI:1.

7.948 In the Panel's view, in the context of a licensing requirement, the open-ended discretion created by the unspecific and generalized requirement to submit an unqualified number of "other" documents of approval in Article 11(7), as applicable to goods subject to export licensing only, or the "other materials" in Articles 5(5) and 8(4) of China's *2008 Export Licensing Working Rules*, creates uncertainty as to an applicant's ability to obtain an export licence. The authority to deny the licence is ever present because the conditions for granting it are subject to the demands of the particular licensing authority. This uncertainty amounts to a restriction on exportation that is inconsistent with Article XI:1.

7.949 The Panel reaches these conclusions in light of the measures in its terms of reference, including the *2009 Export Licensing Catalogue*. In respect of goods subject to export licensing only, China submits that Appendix 1 of the *2010 Export Licensing Catalogue* removes any uncertainty by suspending the requirement for an applicant to submit any other documents of approval in 2010 in order to obtain a licence.

7.950 Setting aside the issue of whether the *2010 Catalogue* falls within the Panel's mandate, the Panel observes that the reference in Appendix 1 of the *2010*

1352. China's first written submission, paras. 803-804.

Catalogue does not modify or remove the documentation requirements in Article 11(7) of China's *2008 Export Licence Administration Measures* or in China's *2008 Export Licensing Working Rules*. Absent modification or repeal of *2008 Export Licence Administration Measures*, the Panel considers that Appendix 1 of the *2010 Catalogue* does not remove the inconsistency of the problematic measures as pertains to manganese and unwrought zinc that are subject to export licensing administration only.

7.951 The Panel lastly considers arguments of the United States and Mexico that China's export licensing regime for the raw materials at issue is inconsistent with Article XI:1 because it allows agencies discretion to determine the quantities that can be exported[1353]; impose minimum price conditions[1354]; or reduce quotas, stop issuing licences, or withdraw export rights under Article 21 of the *CCCMC Coordination Measures*.[1355]

1353. United States' first written submission, para. 340; Mexico's first written submission, para. 342; see 2008 *Export Licence Administration Measures*, Article 6 (Exhibits CHN-342, JE-74); *Export Quota Measures*, Article 25 (Exhibit JE-76).

1354. United States' first written submission, para. 340; United States' second written submission, para. 377, Mexico's first written submission, para. 342; Mexico's second written submission, para. 382; see *Measures for the Administration of Licensing Entities*, Article 40(3) (Exhibits CHN-358, JE-75), *Bauxite Branch Coordination Measures*, Article 7 (Exhibit JE-108).

1355. United States' second written submission, para. 377; Mexico's second written submission, para. 382; see *CCCMC Coordination Measures*, Article 21 (Exhibit JE-107).

7.952 The measures identified by the complainants do not expressly state that licensing agencies may determine the quantities that can be exported. The Panel concluded above that China's export licensing requirement is not inconsistent with Article XI:1 simply because a licence requirement is imposed with respect to "goods subject to ... export restrictions", in particular under Article 19 of China's *Foreign Trade Law*. The Panel explained that quantitative restrictions may be permitted on certain occasions, and accordingly, Article 19 was not on its face inconsistent with GATT Article XI:1. The Panel also concluded that certain provisions at issue allow export licensing agencies a degree of discretion that may sometimes lead to a decision not to grant an export licence. For these reasons, the Panel does not consider it necessary to address the United States' and Mexico's concern further.

7.953 The United States and Mexico additionally refer to Article 40(3) of China's *Measures for the Administration of Licensing Entities*, which sets out the punishment that may be imposed on export licensing agencies that issue licences without following coordinated export prices. The complainants have also identified this provision, and the use of penalties and punishment as prescribed in other provisions of Chinese law, in respect of their claim that China imposes a minimum export price requirement that is inconsistent with GATT Article XI:1. The Panel considers this provision relates to the alleged restrictive effect of a minimum export price requirement. The Panel will thus address the WTO-consistency of these aspects in Section VII.G of these Reports.

7.954 Finally, Article 21 of the *CCCMC Export Coordination Measures* provides: "if more than half of the voting member companies of the coordination organization agree, CCCMC can request the competent authority to reduce [non-compliant companies'] quotas or stop issuing licences for the commodities or even withdraw part or all of their export rights". China claims that this provision does not grant the CCCMC the authority to impose conditions on the issuance of licences, but provides "an internal framework for the CCCMC membership to vote on whether to request MOFCOM to take action to sanction non-compliant firms".[1356]

7.955 The Panel concluded above that licences may be used to implement an underlying restriction that is justified pursuant to another provision of the WTO Agreement; however, such a licence may not be applied in a manner that would impose an additional limiting or restrictive effect. In addition, the Panel explained that the discretion granted to export licensing agencies to refuse to grant an export licence may amount to an additional restriction that is inconsistent with GATT Article XI:1 if the refusal to grant such a licence does not relate to the underlying measure that is implemented through the licensing requirement.

7.956 On its face, Article 21 of the *CCCMC Coordination Measures* allows the CCCMC to request a licensing agency to refuse issuance of licences solely on the basis that more than half of the voting member companies of the coordination organization request such action. The Panel recalls from its 1 October 2010 preliminary ruling

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1356. China's opening oral statement at the second substantive meeting, para. 368.

its finding that the *CCCMC Coordination Measures*, among other measures, was outside the Panel's terms of reference. Therefore, the Panel will not make findings on this measure.

(c) Summary

7.957 The Panel concludes above that licences that are granted without condition or those that implement an underlying measure that is justified pursuant to another provision of the WTO Agreement, such as GATT Article XI:2, XII, XVIII, XIX, XX or XXI, may be consistent with Article XI:1, so long as the licence does not by its nature have a limiting or restrictive effect. Conversely, a licence requirement that results in a restriction additional to that inherent in a permissible measure would be inconsistent with GATT Article XI:1. Such restriction may arise in cases where licensing agencies have unfettered or undefined discretion to reject a licence *application*.

7.958 The Panel finds that China's export licensing regime is not *per se* inconsistent with Article XI:1 on the basis that it permits export licensing agencies to require a licence for "goods subject to ... export restrictions", as provided for in Article 19 of China's *Foreign Trade Law*. The Panel finds, however, that the discretion that arises from the undefined and generalized requirement to submit an unqualified number of "other" documents of approval in Article 11(7) of China's *2008 Export Licence Administration Measures*, as applicable to goods subject to export licensing only, or the "other materials" in Articles 5(5) and 8(4) of China's *Working Rules on Export Licenses*, amounts to an additional restriction inconsistent with Article XI:1.

7.959 The Panel makes no findings as to whether the claims of the United States and Mexico that 40(3) of China's *Measures for the Administration of Licensing Entities* or Article 21 of the *CCCMC Coordination Measures* are inconsistent with GATT Article XI:1, as these measures fall outside its terms of reference. The Panel will consider in Section VII.G below whether Article 40(3) of China's *Measures for the Administration of Licensing Entities* is inconsistent with Article XI:1 of the GATT 1994.

3. Whether China's export licensing system on certain forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc is inconsistent with Paragraph 1.2 of China's Accession Protocol and Paragraphs 162 and 165 of China's Working Party Report

7.960 In addition to their challenge under Article XI:1 of the GATT 1994, the complainants argue that China's export licensing system applied to bauxite, coke, fluorspar, manganese, silicon carbide and zinc is also inconsistent with China's obligations in Paragraph 1.2 of China's Accession Protocol read in combination with Paragraphs 162 and 165 of China's Working Party Report.[1357] The complainants argue that China committed to eliminate any non-automatic export licence requirements and to remove export restrictions unless they could be justified.

7.961 To the extent the Panel finds China's export licence requirement to be inconsistent with Article

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1357. United States' first written submission, paras. 343-347; European Union's first written submission, paras. 323-324; Mexico's first written submission, paras. 345-349.

XI:1, China requests that the Panel exercise judicial economy with respect to claims under Paragraphs 162 and 165 of its Working Party Report. China considers the complainants' claims under these provisions to be "identical" to those under Article XI:1, as assumed by all Members under Article XI:1. It argues that making findings under these provisions "would add nothing to the resolution of this dispute, nor would it aid in any potential implementation."[1358] Regardless, as discussed in the context of the complainants' Article XI:1 claim above, China submits that its export licence requirement is automatic and therefore places no restriction or limit on the quantity of exports of bauxite, coke, fluorspar, manganese, silicon carbide and zinc. China additionally considers that it has "taken steps ... to ensure that it ... abides by WTO rules in respect of non-automatic licensing."[1359] For these reasons, China considers that it has not acted inconsistently with Paragraphs 162 and 165 of its Working Party Report.

7.962 The Panel recalls that Article 1.2 of China's Accession Protocol is an "integral part of the WTO Agreement" and therefore contains enforceable commitments including those "commitments referred to in paragraph 342 of the Working Party Report"[1360]

1358. China's first written submission, para. 808, referring to Panel Report, *EC – Salmon*, para. 7.636.

1359. China's response to second set of Panel questions, question No. 66.

1360. China's Accession Protocol (Exhibit JE-2); see paras. 7.620 to 7.621 above.

Paragraph 342 of China's Working Party Report additionally refers to commitments undertaken by China that are reproduced in paragraphs 162 and 165 of the Working Party Report.

7.963 Paragraph 162 of China's Working Party Report provides:

> "...China confirmed that China would abide by WTO rules in respect of nonautomatic export licensing and export restrictions. The Foreign Trade Law would also be brought into conformity with GATT requirements. Moreover, export restrictions and licensing would only be applied, after the date of accession, in those cases where this was justified by GATT provisions..."

7.964 Paragraph 165 of China's Working Party Report provides:

> "...China confirmed that upon accession, remaining non-automatic restrictions on exports would be notified to the WTO annually and would be eliminated unless they could be justified under the WTO Agreement or the Draft Protocol..."

7.965 Thus, Paragraph 162 requires that China's export licensing requirements, to the extent they are "non-automatic", would be brought into conformity with the GATT. Under the second sentence of Paragraph 162, export licensing or restrictions may only be applied if justified under an provision of the GATT.

7.966 The Panel concluded above that China's export licence system as imposed on bauxite, fluorspar, silicon carbide, coke and zinc is not inconsistent with GATT Article XI:1 because of the mere fact that it applies to "goods subject to ... export restrictions". The Panel found, however, that the discretion that arises from the undefined and generalized requirement to submit an unqualified number of "other" documents of approval in Article 11(7) of China's Export Licensing Measures, as applicable to goods subject to export licensing only, or the "other materials" in Articles 5(5) and 8(4) of China's Working Rules on Export Licenses, amounts to an additional restriction inconsistent with Article XI:1. China did not seek to justify any aspect of its export licensing system under any provision of the GATT 1994.

7.967 The Panel recalls that China requested the Panel to exercise judicial economy in respect of the complainants' additional claims under Paragraphs 162 and 165 of China's Working Party Report. The Appellate Body has stated that panels are not obliged to address all legal claims raised by parties, explaining that "[n]othing in [Article 11 of the DSU][1361] or in previous GATT practice *requires* a panel to examine *all* legal claims made by the

1361. Article 11 of the DSU provides, in relevant part: "...a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements."

complaining party."[1362] The Appellate Body later explained that "a panel has to address those claims on which a finding is necessary in order to enable the DSB to make sufficiently precise recommendations and rulings so as to allow for prompt compliance by a Member with those recommendations and rulings "in order to ensure effective resolution of the disputes to the benefits of Members."[1363]

7.968 Paragraph 162 provides that export licensing may only be applied if justified under any provision of the GATT. Paragraph 165 provides that "non-automatic restrictions" would be eliminated unless they could be justified under the WTO Agreement or Draft Protocol. In the latter respect, the term "non-automatic restrictions" is not defined, although Paragraph 162 notably refers to "restrictions" and "licensing" separately.

7.969 It would seem that three outcomes may arise in respect of China's export licensing requirements at issue. First, the export licensing requirements at issue may be inconsistent with a provision of the WTO Agreement and may not be justified. Second, the export licensing requirements may be inconsistent with a particular provision, such as Article XI:1 of the GATT but may be justified by a provision of the WTO Agreement. Third,

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1362. Appellate Body Report, *US – Wool Shirts and Blouses*, p. 18, DSR 1997:I, 323, at p. 339; DSR 1997:I, at p. 339-340 citing inter alia, *EEC – Import Restrictions*, BISD 30S/129, para. 33; *Canada –FIRA*, BISD 30S/140, para. 5.16; *US –Sugar Quota*, BISD 31S/67, paras. 4.5-4.6; *Japan – Semi-Conductors*, BISD 35S/116, para. 122; and *US –MFN Footwear*, BISD 39S/128, para. 6.18.

1363. Appellate Body Report, *Australia – Salmon*, para. 223.

as explained above, the export licensing requirements may not be inconsistent with any particular provision of the GATT. Under each circumstance, the question arises whether the particular licensing requirements would nevertheless be inconsistent with China's Accession Protocol.

7.970 The Panel does not consider that findings under Paragraph 162 or Paragraph 165 would be required to resolve the dispute in the first case, discussed in the preceding paragraph, i.e., where export licensing requirements at issue may be inconsistent with a provision of the WTO Agreement and may not be justified. The Panel recalls its conclusion that, if particular export requirements operate such that by their nature they have a restrictive or limiting effect on exportation beyond the restriction arising from the underlying permissible restriction itself, then such requirements would not be permissible under Article XI:1 of the GATT 1994. In this dispute, for goods subject to export licensing administration only, the Panel concluded that the requirements of Article 11(7) of *2008 Export Licence Administration Measures* and Articles 5(5) and 8(4) of *2008 Export Licensing Working Rules* are inconsistent with Article XI:1 for this reason. China has not sought to justify these requirements under any provision of the WTO Agreement. In the Panel's view, no additional finding of violation under Paragraph 162 or Paragraph 165 would add to resolving the matter.

7.971 The Panel further does not see how findings under Paragraph 162 or Paragraph 165 would be required to resolve the dispute where export licensing requirements may be inconsistent but may be justified by a provision

of the WTO Agreement. If particular export licensing requirements are inconsistent but somehow justified, then, by the terms of Paragraph 162 and Paragraph 165 of China's Working Party Report, those requirements may be applied. Again, no finding under Paragraph 162 or Paragraph 165 would aid or in fact is needed to resolve the matter.

7.972 Finally, the question arises whether findings in respect of Paragraph 162 or Paragraph 165 would be required to resolve the dispute where an export licensing requirement may not be inconsistent with any particular GATT provision. The Panel concluded above that the export licensing requirement imposed under China's *Foreign Trade Law* applied to "goods subject to ... export restrictions" is not *per se* inconsistent with Article XI:1. In this dispute, the complainants have not submitted evidence beyond the text of certain provisions of China's *Foreign Trade Law* to demonstrate that export licensing applied to the raw materials at issue imposes additional restrictions to those which may arise from the underlying export quota. The Panel explained its view above that the inquiry whether or not a licence requirement is or is not permissible under Article XI:1 does not end at the text of the measure imposing the licensing requirement. In the absence of further evidence, the Panel considers that additional findings under Paragraphs 162 and 165 of China's Working Party Report would not aid in resolving the dispute.[1364] The Panel declines to consider

1364. The Panel additionally takes note, as raised by China in its 18 March comments to the Panel, that the complainants have presented new argumentation, at a late stage in the proceedings, in

the complainants' claim while bearing in mind its findings that the underlying export quotas at issue are not justified pursuant to Article XI:2 or Article XX of the GATT 1994, and bearing in mind that China has not sought to justify its export licensing regime pursuant to any provision of the GATT or the WTO Agreement.

7.973 For the foregoing reasons, the Panel declines to make findings under Paragraphs 162 and 165 of China's Working Party Report.

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arguing that China's export licensing requirements are inconsistent with Paragraphs 162 and 165 of China's Working Party Report. See United States' response to Panel question Nos. 61 and 64 following the second substantive meeting; European Union's response to Panel question No. 61 following the second substantive meeting; Mexico's response to Panel question Nos. 61 and 64 following the second substantive meeting; United States' comments on China's response to Panel question Nos. 61 and 66 following the second substantive meeting; European Union's comments on China's response to Panel question Nos. 61 and 66 following the second substantive meeting; Mexico's comments on China's response to Panel question Nos. 61 and 66 following the second substantive meeting. The European Union argues in particular that that Paragraph 162 "introduces a specific obligation for export licences in general, irrespective of whether they are 'automatic' or 'non-automatic'" – namely, that such licenses "would only be applied ... where ... justified by GATT provisions". European Union's comments on China's response to Panel question No. 66 following the second substantive meeting, paras. 85 and 86. China submits that this position fundamentally changes the nature of the European Union's claim and compromises due process.

4. Whether China's export licensing system on certain forms of bauxite, coke, fluorspar, manganese, silicon carbide and zinc is inconsistent with paragraph 1.2 and 5.1 of China's Accession Protocol and paragraphs 83 and 84 of China's Working Party Report

7.974 In addition to its claims under Article XI:1 of the GATT 1994 and Paragraphs 162 and 165 of China's Working Party Report, the European Union argues that China's export licensing system is inconsistent with paragraphs 5.1 and 1.2 of China's Accession Protocol, in combination with paragraphs 83 and 84 of China's Working Party Report. The European Union argues that China's licensing system amounts to an "examination and approval of trading rights" system in violation of paragraph 84(a) of China's Working Party Report.[1365] By allowing licence issuing agencies discretion to require undefined "other" documents, the European Union argues that China fails to grant to "all enterprises" in China the right to trade the raw materials at issue in violation of Paragraphs 83(d) and 84(a) of China's Working Party Report.[1366] Finally, by granting "broad and unfettered discretion" to export licensing agencies to either accept or refuse applications by foreign enterprises and individuals, the European Union argues that China fails to grant foreign enterprises and individuals the right to trade in a non-discriminatory manner, in violation of paragraph 84(b) of China's Working Party Report.[1367]

1365. European Union's first written submission, para. 334.

1366. European Union's first written submission, para. 335.

1367. European Union's first written submission, para. 336.

7.975 To the extent the Panel finds China's export licence requirements to be inconsistent with Article XI:1, China requests that the Panel also exercise judicial economy with respect to the complainants' claims. China considers these claims are "identical" to those under Article XI:1, and that making findings under these provisions "'would add nothing to the resolution of this dispute, nor would it aid in any potential implementation.'"[1368] Regardless, as discussed in the context of the complainants' Article XI:1 claim above, China submits that its licensing system does not restrict or limit on the quantity of exports of bauxite, coke, fluorspar, manganese, silicon carbide and zinc. Thus, China requests the Panel to reject the European Union's claims.

7.976 The Panel recalls that Article 5.1 of China's Accession Protocol provides:

> "Without prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement...within three years after accession, all enterprises in China shall have the right to trade in all goods...except for those goods listed in Annex 2A... Such right to trade shall be the right to import and export goods...For those goods listed in Annex 2B, China shall phase out limitation on the grant of trading rights pursuant to the schedule in that Annex. China shall complete all necessary legislative procedures to implement these provisions during the transition period."

1368. China's first written submission, para. 811, referring to Panel Report, *EC – Salmon*, para. 7.636.

7.977 As noted, Article 1.2 of China's Accession Protocol is an "integral part of the WTO Agreement" and therefore contains enforceable commitments including those "commitments referred to in paragraph 342 of the Working Party Report"[1369] Paragraph 342 of China's Working Party Report additionally refers to commitments undertaken by China that are reproduced in paragraphs 83 and 84 of the Working Party Report.

7.978 Paragraph 83(d) of China's Working Party Report provides:

> "...China also confirmed that within three years after accession, all enterprises in China would be granted the right to trade."

7.979 Paragraph 84(a) of China's Working Party Report provides:

> "...China reconfirmed that China would eliminate its system of examination and approval of trading rights within three years after accession. At that time, China would permit all enterprises in China and foreign enterprises and individuals...to export...all goods..."

7.980 Paragraph 84(b) of China's Working Party Report provides:

> "With respect to the grant of trading rights to foreign enterprises and individuals... China confirmed that such rights would be granted in a non-discriminatory and nondiscretionary

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1369. China's Accession Protocol (Exhibit JE-2); see paras. 7.620 to 7.621 above.

> way....[A]ny requirements for obtaining trading rights would be for customs and fiscal purposes only and would not constitute a barrier to trade..."

7.981 As noted in paragraph 7.653 above, the Appellate Body in *China – Audiovisual Products and Services*, addressed the meaning of China's right to regulate trade under Article 5.1 of China's Accession Protocol. Of particular relevance to these claims of the complainants, the Appellate Body explained that the "obligations assumed by China in respect of trading rights, which relate to traders" is "closely intertwined" with "obligations imposed on all WTO Members in respect of their regulation of trade in goods", including those under Article XI of the GATT 1994.[1370]

7.982 The Panel concluded in paragraph 7.938 above that China's export license system as imposed on bauxite, fluorspar, silicon carbide, coke and zinc is not inconsistent with GATT Article XI:1 because of the mere fact that it applies to "goods subject to ... export restrictions". The Panel found, however, that the discretion that arises from the undefined and generalized requirement to submit an unqualified number of "other" documents of approval in Article 11(7) of China's Export Licensing Measures, as applicable to goods subject to export licensing only, or the "other materials" in Articles 5(5) and 8(4) of China's Working Rules on Export Licenses, amounts to an additional restriction inconsistent with Article XI:1. China

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1370. Appellate Body Report, *China – Publications and Audiovisual Products*, para. 226.

did not seek to justify any aspect of its export licensing system under any provision of the GATT 1994.

7.983 The Panel fails to see how further findings in respect of Paragraphs 83 and 84 of China's Working Party Report would aid in resolving the dispute. The Panel recalls that China requested the Panel to exercise judicial economy in respect of the European Union's claims. As mentioned in paragraph 7.967 above, the Appellate Body has clarified that "a panel has the discretion to determine the claims it must address in order to resolve the dispute between the parties."[1371] In light of its finding that the requirements of Article 11(7) of China's Export Licensing Measures and Articles 5(5) and 8(4) of China's Working Rules on Export Licenses are inconsistent with GATT Article XI:1, and are not justified, the Panel considers that further findings on this matter would not be necessary to resolve the dispute. Therefore, the Panel does not make findings in this regard.

G. MINIMUM EXPORT PRICES

7.984 The complainants claim that China imposes a minimum export price (MEP) requirement for certain forms of bauxite coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc[1372] that constitutes a restriction on exportation that is inconsistent with Article XI:1 of the GATT 1994. They submit that coordination of export prices continued to be enforced through application

1371. Appellate Body Report, *India – Patents (US)*, para. 87.

1372. The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-7 and paragraph 2.2 of the Descriptive Part to these Reports.

of the Price Verification and Chop (PVC) export clearance process even after the apparent repeal of this procedure in 26 May 2008.[1373] The complainants further claim that the manner in which China administers the MEP requirement through the involvement of the CCCMC in the PVC export clearance process is inconsistent with the obligation to administer laws in a uniform, impartial and reasonable manner under Article X:3(a) of the GATT 1994.[1374] Finally, the complainants claim that China failed to publish certain measures providing rules and details on how the CCCMC coordinates export prices in contravention of Article X:1 of the GATT 1994.[1375]

7.985 China contends that it "abandoned" price coordination in 2008 before the Panel's establishment[1376], and therefore requests the Panel not to make findings on measures identified in connection with the complainants' MEP-related claims. In addition, China asserts that the complainants have failed to establish that China continued to impose and enforce an MEP requirement

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1373. United States' first written submission, paras. 360-361; European Union's first written submission, paras. 364-365; Mexico's first written submission, paras. 363-364.

1374. United States' first written submission, paras. 364-374; European Union's first written submission, paras. 368-378; Mexico's first written submission, paras. 367-377.

1375. United States' first written submission, paras. 375-381; European Union's first written submission, paras. 379-385; Mexico's first written submission, paras. 378-384.

1376. China's first written submission, para. 838; China's response to Panel question No. 1, para. 20.

after the repeal of export price coordination in 2008[1377], or that an alleged MEP-requirement restricts export in a manner inconsistent with Article XI:1.[1378] Finally, China asserts that the Panel should not make findings on the complainants' claims under Articles X:1 and X:3(a) of the GATT 1994. China submits that the Panel should not make findings on measures governing the administration of the PVC system because such system was repealed and the measures no longer exist.[1379] China further argues that the measures which are alleged not to have been published either no longer apply or have been formally repealed, and therefore require no publication pursuant to Article X:1 of the GATT 1994.[1380]

7.986 The Panel will address the complainants' claims under Articles XI:1, X:1 and X:3(a) of the GATT 1994 separately below. Before doing so, the Panel will address measures within its terms of reference. The Panel will then address China's claim that it effectively abandoned export price coordination in 2008, prior to the Panel's establishment. Thereafter, we will consider the complainants' assertion that China continued to enforce export price coordination, even after the repeal of the PVC procedure by the 2008 PVC Notice. In the event that China had in a place a minimum price requirement at the time of the Panel's establishment, we will address

1377. China's first written submission, paras. 842-853.

1378. China's first written submission, paras. 854-865.

1379. China's first written submission, para. 867.

1380. China's first written submission, paras. 868-872.

whether this requirement is inconsistent with Articles XI:1, X:1 and X:3(a).

1. MEP-related measures within the Panel's terms of reference

7.987 The Panel recalls from its 1 October 2010 preliminary ruling its finding that only six measures referred to by the complainants in both their consultation requests and Panel Requests would form part of the Panel's terms of reference.[1381] In its preliminary ruling request, China asked the Panel to find, *inter alia*, that the complainants' Panel Requests failed to comply with the requirements of Article 6.2 of the DSU because "Section III" of the complainants' Panel Requests did not identify clearly and specifically the measures under challenge, including those concerning its MEP-related claims, or provide a brief summary of the legal basis sufficient to present the problem clearly.[1382]

7.988 To recall, in their Panel Requests, the complainants identified nine measures that related to their MEP-related claims. Three of these measures were not listed in the complainants' consultation requests. In the first phase of its preliminary ruling, the Panel stated that it would reserve its decision on whether "Section III" of the complainants' Panel Requests identify clearly and specifically the measures under challenge (including the complainants' MEP-related claims), and whether "Section

1381. See paragraphs 1.10 to 1.13 above; Annex F to these Reports.

1382. The text of the complainants' Panel Requests is identical.

III" of their requests provides a brief summary of the legal basis sufficient to present the problem clearly, until after it had received the complainants' first written submissions.

7.989 In their first written submissions, the complainants referred to six additional MEP-related measures that were not included in their consultation or Panel Requests. The complainants did not indicate any particular basis for mentioning these additional measures in their first written submissions.

7.990 Following receipt of the complainants' and China's first written submissions, the Panel asked the complainants to indicate which measures are properly before the Panel whether due to their inclusion in the consultation and/or Panel Request, or as an amendment, extension, replacement measure, renewal measure or implementing measure.[1383] The complainants indicated which measures that they considered to be in the Panel's terms of reference.[1384]

7.991 On 1 October 2010, the Panel issued the second phase of its preliminary ruling. The Panel concluded that the complainants' Panel Requests, as clarified by their first submissions, provide sufficient connection between the measures listed in "Section III" and the listed claims of violations, with the exception of the European Union's publication claim concerning coke quotas. In addition, the Panel concluded that alleged measures referred to solely

1383. Panel question No. 1(a) and (b).

1384. See complainants' response to Panel question No. 1 following the first substantive meeting; United States' Attachment – Chart A re Question 1(a) & (b).

in the complainants' Panel Requests, but not in their consultation requests, and those alleged measures referred to by the complainants in their subsequent submissions, were not properly before the Panel as measures at issue. On this basis, the Panel concluded that only six MEP-related measures remained in the Panel's terms of reference. These are: (1) *Measures for Administration of Trade Social Organizations*[1385]; (2) *Regulations for Personnel Management of Chambers of Commerce*[1386]; (3) *1994 CCCMC Charter*[1387]; (4) *2001 CCCMC Charter*[1388]; (5) *Export Price Penalties Regulations*[1389]; and (6) *Measures for Administration of Licensing Entities.*[1390]

7.992 The complainants submit that the Panel's findings in the second phase of its preliminary ruling that certain MEP-related measures are outside the Panel's terms of reference were not made in response to a preliminary ruling request and cannot be part of a ruling. The United States argues that the findings pertaining to MEP-related measures in the second phase of the Panel's preliminary ruling were not made in response to a preliminary ruling under the Panel's Working Procedures. Moreover, it argues that China's first written submission did not include a request for a preliminary ruling. Even if China

1385. Exhibits CHN-313, JE-101.

1386. Exhibits CHN-315, JE-102.

1387. Exhibit JE-86.

1388. Exhibits CHN-16, JE-87.

1389. Exhibits CHN-350, JE-113.

1390. Exhibits CHN-358, JE-75.

had made a second preliminary ruling request, the United States argues that the Panel did not determine a time prior to the first substantive meeting for the complainants to respond to China's terms of reference arguments on the MEP-related measures. Therefore, the complainants consider the aspects of the Panel's preliminary ruling regarding these measures to be invalid and request the Panel to re-examine *de novo* its decision on these measures.[1391] The United States submits further that, under the DSU and Panel's Working Procedures, the complainants are permitted to make rebuttals – including on the status of excluded MEP-related measures – until the second substantive meeting.[1392]

7.993 The Panel considers that it was permitted to address whether the particular MEP-related measures that either were not listed in the complainants' consultation requests, or were not included in their Panel Requests, were within its terms of reference. The Appellate Body clarified that Panels may address "issues which go to the root of their jurisdiction – that is, to their authority to deal with and dispose of matters ... if necessary, on their own motion – in order to satisfy themselves that they have authority to proceed".[1393] The Panel sought to clarify the scope of its mandate concerning the complainants' MEP-related claims.

1391. United States' second written submission, paras. 408-414.

1392. United States' second written submission, para. 416.

1393. Appellate Body Report, *Mexico – Corn Syrup (Article 21.5 – US)*, para. 36.

7.994 With respect to three measures relating to the PVC procedure that were included in the Panel Requests but not the consultations requests[1394], the Panel notes that all of the particular measures sought to be included in the Panel's terms of reference existed well in advance of the time of consultations and the submission of the complainants' Panel Requests. These additional instruments are not amendments to any of the measures listed in the consultation requests that came into existence between the time of consultations and submission of the Panel Requests. The Panel fails to see any basis for the complainants not to have included these measures, due to the fact that these measures were available to the complainants. Moreover, these measures as presented to the Panel do not identify any of the products at issue in this dispute.[1395]

1394. In particular, *Notice of the Rules on Price Reviews of Export Products by the Customs* (not submitted); *CCCMC PVC Rules* (Exhibit JE-127); and *Online PVC Instructions* (Exhibit JE-123).

1395. The complainants consider that those instruments included in the Panel Requests but not the consultations requests should be considered as measures at issue in this dispute because the measures are "all part of the same PVC procedure of which the *2002 PVC Notice* (Exhibit JE-122) and *2004 PVC Notice* (Exhibit JE-121), which were consulted on, form a part", and because these additional instruments "relate to the same procedure and same product at issue under the 2002 PVC Notice and the 2004 PVC Notice". The complainants argue that the inclusion of these measures therefore does not "expand the scope of the dispute". (See, e.g., United States' second written submission, para. 440). The complainants consider that the Appellate Body Report on *US – Continued Zeroing* is "apposite" to an assessment of whether

7.995 Similarly, with respect to measures that are not included in either the consultation or Panel Requests, but are alleged to be "implementing" measures, the Panel again notes that all of the alleged additional "implementing measures" set out by the complainants in their first written submissions[1396] existed well in advance of the time of consultations and the submission of the complainants' Panel Requests. The Panel thus sees no reason why the complainants opted to delay or withhold identifying these measures. It is evident from the complainants' submissions that these measures were identified in connection with

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the additional PVC measures should be included in the Panel's terms of reference. We note, however, that the Appellate Body in that appeal found that the measures subject to the complainant's challenge "encompass[ed] the anti-dumping duties resulting from the proceedings identified in the consultations request" and "additional measures relate to the same duties identified in the consultations request, and the legal basis of the claims raised is the same". (Appellate Body Report on *US – Continued Zeroing*, paras. 226, 228) As noted, the complainants have not provided cogent reasons for the failure to raise these measures at the time of consultations. Moreover, the complainants' submitted versions of the 2002 and 2004 PVC Notices, which are alleged to form the basis for the later inclusion of the *Notice of the Rules on Price Reviews of Export Products by the Customs* (not submitted); *CCCMC PVC Rules* (Exhibit JE-127); and *Online PVC Instructions* (Exhibit JE-123) do not include reference to any of the raw materials at issue in this dispute.

1396. In particular, *CCCMC Export Coordination Measures* (Exhibit JE-107); *CCCMC Bauxite Branch Coordination Measures* (Exhibit JE-108); *Bauxite Branch Charter* (Exhibit JE-112); and "system of self discipline" (see complainants' first written submission, paragraph 205).

statements made and evidence submitted in the context of various US court proceedings concerning allegations of price-fixing and other anticompetitive activities, dating as far back as 2006.[1397] In addition, the complainants failed to offer any elaboration as to how these measures are "implementing measures" to basic framework laws until the conclusion of their second written submissions.[1398]

7.996 For the foregoing reasons, and in light of its preliminary ruling, the Panel will limit any rulings on the complainants' MEP-related claims to the six measures that appear in the complainants' Panel Requests. Notwithstanding this view, the Panel may consider other instruments and documents referred to by the complainants – though outside its terms of reference – in order to assess fully the legal situation and operation of an MEP requirement in China.[1399] The Panel does not consider the fact that certain measures are outside the Panel's terms of reference to mean that such laws, regulations or instruments did or do not exist, or should

1397. See United States' first written submission, paras. 207-208, fns. 284, 285, 288, 289, 209; MOFCOM Statement in *In re Vitamin C Antitrust Litigation*, para. 3 (Exhibit JE-111).

1398. The complainants argue in their second written submissions that measures may be included in a panel's terms of reference if the panel request refers to "implementing measures", and those measures can be considered to "implement" measures that are specifically identified in the panel request. See United States' second written submission, para 421, citing Panel Report, *Japan – Film*, para 10.8.

1399. Appellate Body Report, *EC – Selected Customs Matters*, para. 188 (stating that "[a] panel is not precluded from assessing a piece of evidence for the mere reason that it pre dates or post-dates its establishment").

be completely excluded from the Panel's assessment. The Panel will not, however, make findings or recommendations on any laws, regulations or instruments that are excluded from its terms of reference.

2. Whether China enforced a coordinated MEP requirement on exporters of bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc at the time of the Panel's establishment

7.997 The complainants argue that China imposes an MEP requirement for certain forms of bauxite coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc.[1400] The complainants argue that China coordinates export prices for the products at issue through a "system of self-discipline" based on informal statements and oral agreements between traders and export regulators and where the CCCMC directs commodity-specific branches or coordination groups.[1401] The complainants submit price data for bauxite and yellow phosphorus, in particular, to show that China set coordinated export prices for these two products.[1402] The complainants also allege that China

1400. The specific forms of the raw materials subject to the United States' claims are identified in Exhibit JE-7 and paragraph 2.2 of the Descriptive Part to these Reports.

1401. United States' first written submission, para. 349-351; European Communities' first written submission, para. 353-355; Mexico's first written submission, para. 352-354; United States' comments on China's response to Panel question No. 10; CCCMC website pages, 5-7 (Exhibit JE-88).

1402. See United States' first written submission, para. 226; European Union's first written submission, paras. 230; Mexico's first written submission, para. 229; United States' second

enforces these coordinated export prices through the application of penalties imposed by MOFCOM against nonconforming exporters as well as penalties imposed against licensing authorities that issue licences to non-conforming exporters.[1403] Finally, the complainants allege that China enforces coordinated prices, at least on yellow phosphorus through the use of the PVC procedure which permits customs authorities to deny clearance to yellow phosphorus exports that do not conform to the minimum coordinated price.[1404] The complainants submit evidence of price data and screenshots of online web pages from 2008 and 2009 in arguing that the coordination of export prices continued to be enforced through application of the PVC export clearance process even after the apparent repeal of this procedure on 26 May 2008.[1405]

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written submission, para. 391; European Union's second written submission, para. 172; Mexico's first written submission, para. 394; Exhibit JE-126.

1403. United States' first written submission, paras. 352-355; European Union's first written submission, para. 356-359; Mexico's first written submission, para. 355-358; Complainants' response to Panel question No. 13.

1404. United States' first written submission, paras. 356-359; European Communities' first written submission, paras. 360-363; Mexico's first written submission, paras. 359-362; Complainants' response to Panel question No. 11.

1405. United States' first written submission, paras. 357, 360; European Communities' first written submission, paras. 361, 364; Mexico's first written submission, paras. 360, 363; United States' second written submission, paras. 448, 450; European Union's second written submission, para. 172; Mexico's first written submission, paras. 365, 368.

7.998 China alleges that it abandoned price coordination in 2008 through measures submitted by MOFCOM[1406], and requests the Panel not make findings in respect of the complainants' MEP-related claims. Prior to 2008, China submits that it designated MOFCOM to coordinate export prices to minimize the possibility of injurious dumping of Chinese exports by individual exporters.[1407] China argues that it repealed a number of measures that authorized the coordination of export prices, the sanction of exporter licensing entities, and use of the PVC procedure.[1408] It considers that any outstanding measures that were not formally repealed became effectively "inapplicable".[1409] China considers that findings on these measures would serve no purpose because the measures do not have legal effect such that they could violate WTO obligations or nullify or impair benefits.[1410] China further submits that the complainants have not provided evidence – either through reference to events that occurred between 2001 and 2007[1411], screenshots taken from the CCCMC website after 2008[1412] or price data on yellow phosphorus and

1406. China's response to Panel question No. 1, para. 20.

1407. China's first written submission, paras. 838-847; China's second written submission, para. 565; *Normal Export Price Provisions*, Article 5 (Exhibit CHN-50).

1408. China's first written submission, para. 838.

1409. China's second written submission, paras. 567-570; Exhibit CHN-438.

1410. China's first written submission, paras. 47, 52, 57-67.

1411. China's first written submission, paras. 842.

1412. China's first written submission, paras. 839, 843.

bauxite taken in May 2008[1413] – to support its allegations that enterprises were required to coordinate export prices after 2008.

7.999 The Panel will address the various allegations by the complainants that China enforces an MEP requirement on exporters of certain raw materials. The Panel explained above that it would not make rulings or recommendations on any laws, regulations or instruments that are excluded from its terms of reference, but may consider them in assessing fully the legal situation and operation of an MEP requirement in China.

7.1000 The Panel will first consider whether these measures may form the basis of a WTO violation. Then, the Panel will assess the operation of these measures and whether these measures remain in force or have been repealed as argued by China. Finally, the Panel will consider the complainants' allegation that China continued to coordinate and enforce an MEP requirement even after the apparent repeal of this procedure on 26 May 2008.

(a) Whether the measures at issue may be subject to WTO dispute settlement

7.1001 A first issue facing the Panel is whether the measures presented by the complainants can be considered WTO measures under the DSU and WTO Dispute Settlement Mechanism for purposes of the complainants' claims. The Panel recalls that certain of the measures identified by the complainants are not formal legislation

1413. China's first written submission, para. 851, Exhibits CHN-361, CHN-362, CHN-363.

but are charters and regulations of non-governmental bodies, such as the CCCMC or CCCMC Bauxite Branch.

7.1002 The complainants argue that China's Chambers of Commerce, including the CCCMC, "function as entities under MOFCOM's direct and active supervision and, accordingly, play a central role in regulating the trade of China's industries".[1414] Through its intervention in a 2006 US court proceeding[1415], the complainants submit that China referred to its authority over China's Chambers of Commerce, including the CCCMC, as established through various provisions of the Measures for Administration of Trade Social Organizations[1416] and the Regulations for Personnel Management of Chambers of Commerce.[1417] The complainants submit that China described its authority over these entities as "plenary" and described the Chamber of Commerce as "the instrumentality through which [MOFCOM] oversees and regulates the business

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1414. United State's first written submission, para. 207, referring to Brief of Amicus Curiae: MOFCOM. *In Re Vitamin C Antitrust Litigation* (E.D. NY Jun. 26, 2006), at p. 5 (Exhibit JE-98).

1415. United States' first written submission, para. 208. In footnote 285, the United States notes the statement by the US presiding judge in the Opinion *In re Vitamin C Antitrust Litigation* that "The Chinese government's appearance as *amicus curiae* is unprecedented. It has never ... come before the United States as *amicus* to present its views" See *In re Vitamin C Antitrust Litigation*, 584 F. Supp. 2d 546 (E.D. NY Nov. 6, 2008), at p. 546-55 (Exhibit JE-103).

1416. Exhibit JE-101, Article 14.

1417. Exhibit JE-102.

of importing and exporting [] products in China".[1418] On this basis, the complainants consider that the CCCMC's export-price related functions and responsibilities are attributable to China.[1419]

7.1003 China has asserted that certain measures are not "sources of Chinese law".[1420] China admits that MOFCOM and the GAC delegated certain implementing

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1418. United States' first written submission, para. 208, citing Brief of Amicus Curiae: MOFCOM at p. 9 (Exhibit JE-98); United States' response to Panel question 67 following the second substantive meeting para. 133; European Union's response to Panel question 67 following the second substantive meeting; Mexico's response to Panel question 67 following the second substantive meeting.

1419. In addition, the complainants claim that China's MOFCOM itself considers the CCCMC as an "'instrumentality through which [MOFCOM] oversees and regulates the business of importing and exporting [] products in China.'" United States' first written submission, para. 208, fn. 290, citing Brief of Amicus Curiae: MOFCOM. *In Re Vitamin C Antitrust Litigation* (E.D. NY Jun. 26, 2006), at p. 9 (Exhibit JE-98); see also Memorandum in Support of Defendants' Joint Motion to Dismiss First Amended Complaint in *Resco Products, Inc. v. Bosai Minerals Group and CMP Tiajin Co.* (Oct. 7, 2008) at p. 9 (Exhibit JE-105), Memorandum in Support of Motion to Dismiss Plaintiffs' First Amended Class Action Complaint by Defendants, China Minmetals Corp. and China National Minerals Co. in *Animal Science Products, Inc. v. China National Metals and Minerals Import and Export Corp.* (D. NJ Jun. 26, 2009) at p. 11 (Exhibit JE-106).

1420. China's response to Panel question No. 1, para. 14 following the first substantive meeting.

authority to the CCCMC to coordinate export prices[1421], but it explains that with the repeal of the PVC system in 2008, implementation authority granted to CCCMC terminated.[1422]

7.1004 Article 3.3 of the DSU allows WTO Members to resort to the dispute settlement system of the WTO in "situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member". In *US –Corrosion Resistant Steel Sunset Reviews*, the Appellate Body explained that "[i]n principle, any act or omission *attributable* to a WTO Member can be a measure of that Member for purposes of dispute settlement proceedings."[1423] Thus, governmental actions may clearly be challenged under dispute settlement proceedings. Private actions have also been found to be "attributable" to a government, and thus

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1421. China states that MOFCOM and the GAC, acting under the State Council, enjoy authority over the administration of customs-related matters, foreign trade, investment, and economic cooperation in China. See China's response to Panel question No. 1, para. 21 following the first substantive meeting.

1422. China's response to Panel question No. 1 following the first substantive meeting, para. 21; China submits that the CCCMC affirmed that any document pertaining to the PVC system has not been applied since 2008. See *Resolution of the Fifth Standing Committee of the CCCMC on Abolishing Certain Documents Including Measures of the CCCMC on the Coordination and Administration of Export Commodities* (Exhibit CHN-4).

1423. Appellate Body Report, *US – Corrosion Resistant Steel Sunset Reviews*, para. 81 (emphasis added).

subject to challenge, where there is "some governmental connection to or endorsement of those actions".[1424] For instance, the panel in *Japan – Film* concluded, as the GATT panel on *Japan-Semi-conductors* before it, that "administrative guidance" that "creates incentives or disincentives largely dependent upon governmental action for private parties to act in a particular manner" may constitute a governmental measure.[1425]

7.1005 China acknowledges that through MOFCOM and the GAC it delegated certain implementing authority to the CCCMC to coordinate export prices. Evidence presented by the complainants in the form of statements made by China's MOFCOM in the context of US domestic court proceedings prior to this dispute appear to confirm this fact. In the Panel's view, this confirms that actions undertaken by the CCCMC with respect to minimum export price requirements at issue in this dispute are attributable to China, and are thus "measures" that can be challenged under the WTO dispute settlement proceedings. In addition, China does not dispute that

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1424. Panel Report, *Japan – Film*, para. 10.52.

1425. Panel Report, *Japan – Film*, para. 10.45. The GATT panel in *Japan – Semi-conductors* held that, in cases where "sufficient incentives or disincentives existed for non-mandatory measures to take effect" and "the operation of measures ... was essentially dependent on [g]overnment action or intervention", then "the measures would be operating in a manner equivalent to mandatory requirements such that the difference between the measures and mandatory requirements was only one of form and not of substance ..." GATT Panel Report, *Japan – Semi-conductors*, para. 109.

it, through MOFCOM, regulates the administration of licence issuance and, through China's Customs, regulates customs clearance proceedings.

7.1006 Accordingly, the Panel is satisfied that the measures at issue in this dispute that have been identified by the complainants are measures "attributable" to China. The Panel will therefore consider whether these measures remained in force at the time of the Panel's establishment, and whether the measures operate as a minimum export price requirement that is inconsistent with Article XI:1 of the GATT 1994, as alleged by the complainants.

(b) Whether China requires exporters to coordinate minimum export prices on exports of bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc

7.1007 The Panel will assess whether the measures identified by the complainants remained in force at the time of the Panel's establishment, and whether these measures establish the existence of an MEP requirement. First, the Panel will asses whether China through the various CCCMC measures directs exporters of the raw materials to coordinate export prices. Second, the Panel will assess whether China requires exporters to adhere to coordinated export prices through: (i) penalties imposed on exporters that fail to set prices in accordance with the coordinated export prices; (ii) penalties imposed on licensing entities that issue licences to non-complying exporters; and (iii) application of the PVC export clearance process. The Panel will also assess the complainants' assertion that China otherwise enforced coordinated

minimum export prices after the Panel's establishment despite the repeal of certain measures.

(i) Whether China through the CCCMC coordinates export prices

7.1008 The complainants argue that the (1) *1994 CCCMC Charter*[1426]; (2) *2001 CCCMC Charter*[1427]; (3) *CCCMC Export Coordination Measures*[1428]; (4) CCCMC Brochure[1429] and CCCMC website pages[1430]; (5) *CCCMC Bauxite Branch Coordination Measures*[1431]; and (6) *CCCMC Bauxite Branch Charter*[1432] establish that China, through the CCCMC coordinates export prices. In particular, under the *1994* and *2001 CCCMC Charters*, *CCCMC Export Coordination Measures* and *CCCMC Bauxite Branch Charter*, the complainants submit that the CCCMC directs commodity-specific branches or coordination groups to coordinate export prices for the relevant commodities.[1433]

1426. Articles 3, 6, 14 (Exhibit JE-86).

1427. Articles 3, 6, 14 (Exhibits CHN-16, JE-87).

1428. Article 2, 4(3) and 18, 19, 20, 21 (Exhibit JE-107).

1429. Exhibit JE-89, p.14.

1430. Exhibit JE-88 pages 3-5.

1431. Articles 1, 4, 7, 21 (Exhibit JE-108).

1432. Articles 8, 20(3), 45 (Exhibit JE-112).

1433. United States' first written submission, para. 350; European Union's first written submission, para. 354; Mexico's first written submission, para. 353; United States' comments on China's response to Panel question No. 10 following the first substantive meeting para 25; CCCMC website pages, 5-7 (Exhibit JE-88).

The complainants refer to official statements by China's MOFCOM[1434] and documents submitted by exporters and members of the CCCMC to support their allegation that the CCCMC coordinates export prices.[1435] Finally, the complainants submit price data for bauxite and yellow phosphorus, in particular, to show that China set coordinated export prices for these two products.[1436] Only the 1994 and 2001 CCCMC Charters remain in the Panel's terms of reference.

7.1009 Article 6 of the *1994 CCCMC Charter* indicates that the CCCMC should "coordinate[e] ... the industry's import and export prices, markets and customers etc. in accordance with the National Authorities' opinions or on the basis of the joint requests and industry agreements

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1434. See, e.g., MOFTEC Assistant Minister Liu Xiangdong's Speech to the Third Congress of the CCCMC, paras. 10-11 (Exhibit JE-109); *1998 Price Coordination Circular*, paras. 2 and 4 (Exhibit JE-110); CCCMC Website Pages, para. 3 (Exhibit JE-88); CCCMC Brochure, para. 4 (Exhibit JE-89).

1435. United States' first written submission, para. 351; European Union's first written submission, para. 355; Mexico's first written submission, para. 354; United States' response to Panel question No. 10 following the first substantive meeting, para 15; European Union's response to Panel question No. 10 following the first substantive meeting; Mexico's response to Panel question No. 10 following the first substantive meeting.

1436. See United States' first written submission, para. 226; European Union's first written submission, paras. 230; Mexico's first written submission, para. 229; United States' second written submission, para. 391; European Union's second written submission, para. 172; Mexico's first written submission, para. 394; Exhibit JE-126.

between the member companies". Article 14 indicates that the CCCMC may impose sanctions against exporters that fail to comply with the Charter or coordination programs.

7.1010 Article 3 of the *2001 CCCMC Charter* specifies that the CCCMC is to "coordinate and direct import and export trade activities of Metals, Minerals & Chemicals industries". Article 6 of the *2001 CCCMC Charter* does not refer to export price coordination; however, Article 6(3) provides that the CCCMC shall "promote the industry's self-discipline", including adopting "sanction measures against breaching companies.[1437]

7.1011 Although the *1994 CCCMC Charter* indicates that the CCCMC is responsible for coordinating industry export prices, the *2001 CCCMC Charter* does not clearly indicate that the CCCMC retains such responsibility. China argues that the *2001 CCCMC Charter* fully replaced the *1994 CCCMC Charter*. The complainants disagree, and suggest there is evidence that exporters were required to follow industry export prices even after 2001.[1438]

1437. Article 6 of the *2001 CCCMC Charter* instead refers to the need to "coordinate and direct import and export trade activities", "promote the industry's self-discipline", and "[o]rganize members in responding to allegations launched by foreign countries against China for dumping, subsidies and protective measures related to metal, mineral and chemical products" (Exhibit JE-87).

1438. Evidence includes price data for bauxite and yellow phosphorus and screenshots of CCCMC website pages. See United States' first written submission, para. 226; European Union's first written submission, paras. 230; Mexico's first written submission, para. 229; United States' second written submission, para. 391; European Union's second written submission, para. 172; Mexico's

7.1012 China argues that the *2010 CCCMC Charter* formally replaces both the *1994* and *2001 CCCMC Charters*, and in no way authorizes the CCCMC to regulate industry price coordination.[1439]

7.1013 In addition, China argues that it effectively abandoned price coordination on 9 January 2008[1440], which was later formalized on 26 May 2008 through issuance of the *2008 PVC Notice*.[1441] Moreover, China argues that in a 2010 Resolution[1442] it abolished all aspects of the export coordination system.

7.1014 The *2010 CCCMC Charter* and *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* discussed above entered into force following the date of the Panel's establishment. As explained in paragraph 7.33 au-dessus, in general, only measures that were in force when the Panel was established on 21 December 2009 form the basis of its terms of reference.[1443]

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first written submission, para. 394; Exhibit JE-126l; *CCCMC Export Coordination Measures*, Articles 3, 5 (Exhibit JE-107); CCCMC Brochure, at 14 (Exhibit JE-89); CCCMC Website Pages, at 3-5 (Exhibit JE-188).

1439. China's second written submission, paras. 562, 574.

1440. *2008 Notice Ceasing the Work of PVC for Export Contract of 9 Types of Commodities* (Exhibit CHN-352).

1441. *2008 PVC Notice* (Exhibits CHN-2, JE-125).

1442. *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* (Exhibit CHN-4).

1443. The Panel observes, however, that its decision to assess the complainants' claims here does not foreclose the possibility of considering 2010 measures in other contexts.

At the request of the complainants[1444], the Panel will only assess the WTO consistency of the 2009 measures while taking note that the 2010 measures.[1445] Accordingly, the Panel will not consider the *2010 CCCMC Charter* or *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* in its assessment.

7.1015 A notice or resolution stating that China's Customs authorities will no longer enforce the PVC procedure does not determine whether the CCCMC is nevertheless authorized to coordinate export prices. The PVC procedure is limited to enforcing a coordinated price at the border. In addition, the PVC procedure was only employed for one of the products at issue – yellow phosphorus. The Panel will therefore evaluate whether the measures at issue authorized the CCCMC to coordinate export prices, independently of whether the PVC procedure remained in operation.

7.1016 There is no evidence on the face of the *2001 CCCMC Charter* to indicate that it would replace in full the *1994 CCCMC Charter* version. Notwithstanding, it is plausible that a subsequent version of a Charter would replace or supersede a prior version in its entirety, unless

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1444. See United States' and Mexico's responses to Panel question No. 2 following the first substantive meeting and to Panel question No. 1 following the second substantive meeting.

1445. In any event, the *2010 CCCMC Charter* and *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* appear to have a different "essence" than the *2001 CCCMC Charter* that was in place at the time of the Panel's establishment because they appear to remove all authority from the CCCMC to coordinate export prices.

a successive version were to plainly indicate that were not the case. China submits that a resolution of 21 February 2001 confirms that the 2001 Charter replaced the 1994 one.[1446] In addition, Article 16 of the 2001 Charter indicates that the General Assembly of Member Representatives of the CCCMC may draw up or amend the Organization's Charter. Each Charter is in its own right a complete document containing general provisions, description of the CCCMC's functions, members, organization, branches, and finances.[1447] The Panel considers that the two Charters did not remain in force simultaneously. Accordingly, the Panel concludes that the *2001 CCCMC Charter* alone was in force at the time of the Panel's establishment.

7.1017 Despite no express reference to export price coordination in the *2001 CCCMC Charter*, the reference to "coordinat[ion]" of "export trade activities" is broad enough to encompass price coordination. In the Panel's view, evidence confirms that under the *2001 CCCMC Charter*, the CCCMC was indeed authorized to coordinate export prices, at least until 2010 when China issued a Notice and MOFCOM orders to formally repeal the various elements of China's system of coordinating export prices.

7.1018 Additional Chinese instruments identified by the complainants in their first written submissions confirm that the CCCMC was directed to coordinate export prices

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1446. China's response to Panel question No. 69 following the second substantive meeting paras 341-343; See Letter by the China CCCMC, 3 December 2010.

1447. Exhibit JE-86, JE-87.

through a system of self-discipline. These measures are not within the Panel's terms of reference; however, the Panel explained that it may nevertheless consider these instruments as evidence in assessing the operation of China's alleged MEP requirement.

7.1019 Article 2 of the *CCCMC Export Coordination Measures* identifies "self discipline" as an objective of "coordination". Article 4(3) specifically indicates that the CCCMC's "coordination content" shall include "export price". Article 18 indicates that "[c]oordination programs examined, passed and recorded in democratic discussion are collective contracts, and all member companies must fully implement them". Article 19 provides that member companies must provide business statistics or other materials in regard to their exportation, in order "[t]o facilitate supervision and guidance with the implementation of coordination programs". Article 20 states that "[c]oordination organizations for a particular commodity shall regularly inspect the implementation of the Particular Commodity Coordination Management Measures and coordination programs mainly by selfchecking".

7.1020 Article 1 of the *Bauxite Branch Coordination Measures* states that "coordination" shall contribute to "self-discipline". Article 4 specifies that the Branch "shall examine and determine the industry coordinated export prices for bauxite exports", including "once every semester" generally, or at other times "in case of relatively significant price fluctuations on the international markets". Article 7 indicates that industry coordinated export prices should be, inter alia "sent to the license

issuing bodies as a basis for license issuance". Article 10 provides that the coordinated export price is "equivalent to a collective economic contract" and that "each and every company must implement it strictly".

7.1021 Article 8 of the *CCCMC Bauxite Branch Charter* refers to the need to "promote the industry's self-discipline". Article 20(3) provides for disciplinary measures against members that "[f]ail to implement industry coordination". Article 45 indicates that the Bauxite Branch may levy fines to "supervise the implementation of the industry's self-disciplined coordination".

7.1022 China indicates that the *CCCMC Export Coordination Measures* and *CCCMC Bauxite Branch Coordination Measures* were "declared inapplicable" through a 9 January 2008 *Notice*[1448], but states that these measures were repealed by resolution only on 28 July 2010.[1449]

7.1023 The complainants do not provide evidence of price coordination managed by other raw material-specific branches; however, the *CCCMC Export Coordination Measures* and the CCCMC Brochure and identified CCCMC website pages confirm that commodity coordination branches exist for the raw materials at issue.[1450]

1448. *2008 Notice Ceasing the Work of PVC for Export Contract of 9 Types of Commodities* (Exhibit CHN-352).

1449. *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* (Exhibit CHN-4).

1450. See *CCCMC Export Coordination Measures*, Articles 3, 5 (Exhibit JE-107); CCCMC Brochure, p. 14 (Exhibit JE-89);

7.1024 In the Panel's view, the above *CCCMC Export Coordination Measures* and CCCMC *Bauxite Branch Coordination Measures*, as well as CCCMC Brochure and identified CCCMC website, confirm that the CCCMC was authorized to direct and coordinate industry export prices, including during the period between 2001 until 2010. Thus, the Panel concludes that the broad language in the *2001 CCCMC Charter* authorises such coordination for commodity branches overseen by the CCCMC.

7.1025 In the Panel's view, China has not provided evidence to convince the Panel that the practice of coordinating industry prices was formally removed "from the books" in 2008 or any other time before the Panel's establishment on 21 December 2009. The Panel notes in particular China's distinction between points in time in which measures were "declared inapplicable" in comparison to when those measures were formally "repealed". The Panel notes however that China's has only confirmed the formal repeal of measures authorizing the coordination of export prices in 2010, via the 28 July 2010 Resolution discussed above.[1451]

7.1026 Accordingly, the Panel finds that, at least until 28 July 2010, the *2001 CCCMC Charter*, when interpreted in light of available evidence, directed the CCCMC to set and coordinate export prices for all branches under its authority, including for all the raw materials identified in connection with the complainants' claims, namely bauxite,

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CCCMC Website Pages 3-5 (Exhibit JE-188).

1451. *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* (Exhibit CHN-4).

coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc. In light of this finding, the Panel considers it unnecessary to consider price data for bauxite and yellow phosphorus, in particular, to show that China set coordinated export prices for these two products.[1452]

(ii) Whether China enforces an MEP requirement through penalties imposed on exporters and licensing entities and the use of the PVC procedure

7.1027 The complainants submit that China requires exporters to adhere to coordinated export prices through: (i) penalties imposed on exporters that fail to set prices in accordance with the coordinated export prices; (ii) penalties imposed on licensing entities that issue licences to non-complying exporters; and (iii) application of the PVC export clearance process. The Panel considers these three aspects below.

Penalties on exporters

7.1028 The complainants argue that the (1) *Export Price Penalties Regulations*[1453]; (2) *CCCMC Export Coordination Measures*[1454], (3) *CCCMC Bauxite Branch*

1452. See United States' first written submission, para. 226; European Union's first written submission, paras. 230; Mexico's first written submission, para. 229; United States' second written submission, para. 391; European Union's second written submission, para. 172; Mexico's first written submission, para. 394; Exhibit JE-126.

1453. Articles 3, 4, 6 and 9 (Exhibit JE-113).

1454. Article 4(3) (Exhibit JE-107).

Coordination Measures[1455]; and (4) statements by China's MOFCOM, including reference to the existence of a "system of self-discipline"[1456] and the existence of a "collective contract"[1457] establish that China imposes penalties on exporters that fail to set prices in accordance with the coordinated export prices. Alleged penalties imposed on exporters include warnings, suspension of membership or expulsion from the CCCMC, criticism, fines or revocation of exporting rights.[1458] Only the *Export Price Penalties Regulations* are within the Panel's terms of reference.

7.1029 Article 4 of the *Export Price Penalties Regulations* indicates that "all export enterprises shall ... set export prices which are suitable in countries to which the goods are exported". Article 3 indicates that MOFTEC may punish the enterprises that export at "lower-than-normal price". Finally, Article 6 identifies applicable penalties that include notices of criticism, fines of more than 60% of income gained from lower-than-normal price exports, suspension or revocation of bidding or export rights for the enterprise, and fuil "economic responsibility". This

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1455. Articles 7, 8 and 10 (Exhibit JE-108).

1456. See, in particular, MOFCOM Statement *In re Vitamin C Antitrust Litigation* (August 31, 2009), para. 3 (Exhibit JE-111).

1457. See *CCCMC Export Coordination Measures*, Article 21 (Exhibit JE-107).

1458. United States' first written submission, paras. 352-354; European Union's first written submission, para. 356-358; Mexico's first written submission, paras. 355-357.

measure was repealed by order on 12 September 2010.[1459] Article 9 authorizes MOFCOM or the relevant authority to investigate export enterprises suspected of exporting at a lower-than-normal price.

7.1030 As explained in paragraphs 7.33 au-dessus, in general, only measures that were in force when the Panel was established on 21 December 2009 form the basis of its terms of reference.[1460] At the request of the complainants[1461], the Panel will only assess the WTO consistency of the 2009 measures while taking note of 2010 measures.[1462] Thus, for purposes of its assessment of the complainants' claims, the Panel will assess the effect of the *Export Price Penalties Regulations* before its repeal by order on 12 September 2010.

7.1031 The language of the *Export Price Penalties Regulations* is unequivocal in providing a legal basis to impose penalties against enterprises that do not

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1459. *Order No. 2 of 2010 of MOFCOM*, 12 September 2010 (Exhibit CHN-448).

1460. The Panel observes, however, that its decision to assess the complainants' claims here does not foreclose the possibility of considering 2010 measures in other contexts.

1461. See United States' and Mexico's responses to Panel question No. 2 following the first substantive meeting and to Panel question No. 1 following the second substantive meeting.

1462. In any event, the repeal by order on 12 September 2010 appears to have a different "essence" than the 1996 Export Price Penalties Regulations that was in place at the time of the Panel's establishment because it removes the authority to impose penalties on exporters that fail to set prices in accordance with the coordinated export prices.

conform to coordinated export prices. China has not provided evidence to convince the Panel that the practice of imposing penalties on exporters that fail to set prices in accordance with the coordinated export prices was formally removed "from the books" before the Panel's establishment on 21 December 2009. China may in fact have ceased to impose such penalties on exporters on 28 May 2008, at the time it asserts that the PVC procedure was repealed. However, China has only provided evidence of the formal repeal of this provision in 2010 after the Panel's establishment.

7.1032 Additional instruments identified by the complainants – though ruled outside the Panel's terms of reference – confirm that export enterprises would be subject to penalties for failing to conform to coordinated export prices. As explained, these instruments are not within the Panel's terms of reference; however, the Panel explained that it may nevertheless consider these instruments as evidence in assessing the operation of China's alleged MEP requirement.

7.1033 Article 21 of the *CCCMC Export Coordination Measures* indicates that enterprises that follow "coordination programs" will be "honor[ed]" with requests to increase export quotas for that company. In contrast, member companies that do not comply are to be "criticized, warned, ordered to suspend or withdraw their membership, and economically punished according to the damage they have caused", or have their quotas reduced, licences declined, and export rights withdrawn. As pertains to bauxite specifically, Article 8 of the *CCCMC Bauxite Branch Coordination Measures* addresses

sanctions imposed on enterprises in breach, including fines and cancellation of foreign trade operating rights, bidding rights, tax refunds, and financial support. Article 10 of the *CCCMC Bauxite Branch Coordination Measures* provides that coordination of prices is "equivalent to a collective economic contract", and enterprises are "not allowed to act on the basis of [their] individual initiative".

7.1034 As noted in paragraph 7.1022, China has not provided evidence to convince the Panel that the *CCCMC Export Coordination Measures* were formally "repealed" before the Panel's establishment on 21 December 2009. While the complainants do not provide evidence of price coordination managed by other raw material-specific branches, as discussed in paragraph 7.1023, the *CCCMC Export Coordination Measures* and the CCCMC Brochure and identified CCCMC website pages confirm that commodity coordination branches exist for the raw materials at issue.

7.1035 In addition to these measures, the complainants have also referred to statements made by China's MOFCOM in the context of antitrust litigation in the United States.[1463] These statements were made in connection with events taking place prior to 2008, but nevertheless refer to the existence of a "system of self-discipline" and reveal that further parties would be subject to penalties for failure to participate in price coordination.

7.1036 For the foregoing reasons, the Panel concludes that, through the *Export Price Penalties Regulations*, China had in place a system of penalties imposed on

1463. See, in particular, Exhibit JE-111.

exporters that failed to set prices in accordance with the coordinated export prices at least until 12 September 2010.

Penalties on export licence issuing authorities

7.1037 The complainants argue that the *Measures for Administration of Licensing Entities*[1464] and *CCCMC Bauxite Branch Coordination Measures*[1465] establish that China imposes penalties on licensing entities that issue licences to non-complying exporters. Alleged penalties against licensing entities include circulation of a notice of criticism, suspension of the licence-issuing authority, or termination of this authority.[1466] Only the *Measures for Administration of Licensing Entities* are within the Panel's terms of reference.

7.1038 Article 40(3) of the *Measures for Administration of Licensing Entities* indicates that punishment shall be imposed on licensing authorities for "issuing licenses without following the coordinated export prices". Under Article 41, punishment includes public condemnation, and suspension or cancellation of the right to issue licences.

7.1039 China submits that this measure was repealed by the *2004 Export Licence Administration Measures* [1467],

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1464. Article 40(3), 41 (Exhibits CHN-358, JE-75).

1465. Articles 7, 8 and 10 (Exhibit JE-108).

1466. United States' first written submission, paras. 352-355; European Union's first written submission, para. 356-359; Mexico's first written submission, para. 355-358; Complainants' response to Panel question No. 13 following the first substantive meeting.

1467. Exhibit CHN-360.

which was in turn repealed by the 2008 Measures for the Administration of License for the Export of Goods.[1468] China submits that these latter two measures set out general rules on the administration of export licences. For purposes of legal certainty, China submits that Article 40(3) of the *Measures for Administration of Licensing Entities* was removed by a 12 September 2010 decision of the Ministry of Commerce.[1469]

7.1040 As explained in paragraphs 7.33 au-dessus, in general, only measures that were in force when the Panel was established on 21 December 2009 form the basis of its terms of reference.[1470] At the request of the complainants[1471], the Panel will only assess the WTO consistency of the 2009 measures while taking note that the 2010 measures.[1472] Thus, for purposes of its assessment

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1468. Exhibit CHN-342.

1469. *2010 Amendment of Measures for Administration of Licensing Entities* (Exhibit CHN-449).

1470. The Panel observes, however, that its decision to assess the complainants' claims here does not foreclose the possibility of considering 2010 measures in other contexts.

1471. See United States' and Mexico's responses to Panel question No. 2 following the first substantive meeting and to Panel question No. 1 following the second substantive meeting.

1472. In any event, the 2010 Ministry of Commerce decision appears to have a different "essence" than the *Measures for Administration of Licensing Entities* that was in place at the time of the Panel's establishment because it removes the authority to impose penalties on licensing entities that issue licences to non-complying exporters.

of the complainants' claims, the Panel will assess the effect of the *Measures for Administration of Licensing Entities*, or any potential superseding measures, that were effective at the date of the Panel's establishment on 21 December 2009, before the issuance of the 2010 Ministry of Commerce decision.

7.1041 In the Panel's assessment, the content of both the *2004 Export Licence Administration Measures* and *2008 Export Licence Administration Measures* is not identical to that of the *Measures for Administration of Licensing Entities*.[1473] Notably, as the complainants point out[1474], the 2004 and 2008 measures address the "Administration of *Licenses*" and contain rules and requirements governing the issuance of export licences, whereas the 1999 measure at issue addresses the "Administration of the *Organs* for Issuing the Licenses", concerning activities and conduct of China's import and export licensing entities. It is thus unclear whether these latter measures are full replacement measures for the 1999 measure at issue, that is, whether they supersede all aspects of the 1999 measure at issue. Furthermore, there is no express reference on the face of the 2004 or 2008 measures to indicate that they supersede or replace the *Measures for Administration of Licensing Entities*. This stands in contrast to the 2008 Measures for the Administration of License for the Export of Goods, which states that it amends the "Measures for

1473. It should be noted that the content of the *2004 Export Licence Administration Measures* and *2008 Export Licence Administration Measures* is highly similar.

1474. United States' second written submission, para. 463; European Union's second written submission, para. 172; Mexico's second written submission, para. 467.

the Administration of License for the Export of Goods", the same title given to the 2004 version of that measure.

7.1042 Finally, China has stated that it "abandoned" price coordination on 26 May 2008.[1475] In a 2010 decision of the Ministry of Commerce, China removed specific language in Article 40(3) of the 1999 Measures for Administration of Licensing Entities.

7.1043 Accordingly, for the foregoing reasons, the Panel concludes that the 1999 *Measures for Administration of Licensing Entities* were not replaced by either the *2004 Export Licence Administration Measures* or *2008 Export Licence Administration Measures*. As a consequence, the Panel has no evidence that the *Measures for Administration of Licensing Entities* was not valid at the time of the Panel's establishment on 21 December 2009.

7.1044 The complainants have also identified the *CCCMC Bauxite Branch Coordination Measures* as relevant. As discussed above, China indicates that the *CCCMC Bauxite Branch Coordination Measures* were repealed by resolution only on 28 July 2010.[1476] Prior to that date, China argues that this measure was declared inapplicable"

1475. China's first written submission, para. 838; China's response to Panel question No. 1 following the first substantive meeting, para. 20.

1476. *Resolution of the Fifth Standing Committee of the CCCMC on Abolishing Certain Documents Including Measures of the CCCMC on the Coordination and Administration of Export Commodities*, 28 July 2010 (Exhibit CHN-4).

through a 9 January 2008 Notice.[1477] Accordingly, the Panel considers this measure was "on the books" at the date of the Panel's establishment.[1478] As pertains to bauxite specifically, Article 7 of the *CCCMC Bauxite Branch Coordination Measures* provides that industry coordinated export prices shall be notified to licence issuing bodies "as a basis for license issuance". Although this measure is outside the Panel's terms of reference, this measure confirms that the granting of an export licence is conditioned on conformity with industry coordinated export prices.

7.1045 The complainants do not provide evidence of price coordination managed by other raw material-specific branches; however, the *CCCMC Export Coordination Measures* and the CCCMC Brochure (discussed above) and identified CCCMC website pages confirm that commodity coordination branches exist for the raw materials at issue.

7.1046 In light of the above, the Panel concludes that, at the time of establishment of the Panel on 21 December 2009 and at least until 12 September 2010, China, through the *Measures for Administration of Licensing Entities*, had in place a system that imposed penalties on licensing entities that issue licences to exporters that did not follow the coordinated export prices.

1477. *2008 Notice Ceasing the Work of PVC for Export Contract of 9 Types of Commodities* (Exhibit CHN-352).

1478. See the Panel's discussion in paragraphs 7.1022 to 7.1026 above.

Application of the PVC export clearance process to exporters of yellow phosphorus

7.1047 The complainants argue that (1) *China's Customs Law*[1479]; (2) the *2002 PVC Notice*[1480]; (3) the *2004 PVC Notice*[1481]; (4) the *2008 PVC Notice*[1482]; (5) *Online PVC Instructions*[1483]; (6) a screenshot of the CCCMC online PVC interface, dated 28 May 2008[1484]; (7) the *CCCMC PVC Rules*[1485]; (8) *Notice of the Rules on Price Reviews of Export Products by the Customs (Customs Export Price Review Rules)*[1486]; (9) *Rules for Coordination with Respect to Customs Price Review of Export Products (Customs*

1479. Articles 2, 9 and 23 (Exhibit JE-68).

1480. Exhibit JE-121, Article 4.

1481. Paras. 2, 4 (Exhibits CHN-364, JE-122).

1482. *2008 PVC Notice* (Exhibits CHN-2 JE-125).

1483. Exhibit JE-123, Sections 1, 4, 9(2).

1484. Exhibit JE-124, at pages 1-2 and 3-4.

1485. Exhibit JE-127, Annex 3.

1486. This measure was not submitted to the Panel. See United States' first written submission, para. 222. China submits that the *1997 Customs Export Price Review Rules* contains two annexes, which include additional measures referred to by the complainants: the *Customs Export Price Review Coordinating Rules* and *Provisional Rules on Export PVC*. China argues that *1997 Customs Export Price Review Rules* was superseded by the *2003 PVC Notice* and formally repealed on 26 May 2008 when China "abandoned" export price verification. See China's first written submission, para. 849. China submits that the *2010 Abolition of Price Review of Export Commodities* confirms this repeal. See Exhibit CHN-434.

Export Price Review Coordinating Rules)[1487]; and (10) *Provisional Rules on Export Price Verification and Chop for Key Products Subject to Price Review* (Provisional *Rules on Export PVC*)[1488] establish that China requires exporters to conform to coordinated export prices through application of the PVC export clearance process to exports of yellow phosphorus.[1489]

7.1048 Based on the *Customs Export Price Review Rules*, the *Customs Export Price Review Coordinating Rules*, and the *Provisional Rules on Export PVC*, and references in the *2002 PVC Notice* and *2004 PVC Notice*, the complainants submit that the exportation of yellow phosphorus is subject to price review by China's Customs as part of the export clearance process.

7.1049 The *CCCMC PVC Rules* direct the CCCMC to verify the export price of an export contract and affix a PVC chop (seal or stamp) to a PVC form and the contract where the price complies with the coordinated export price.[1490] The exporter must then declare the export contract to Customs for clearance.[1491] Customs may deny

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1487. This measure was not submitted to the Panel. See United States' first written submission, para. 222.

1488. This measure was not submitted to the Panel. See United States' first written submission, para. 222.

1489. The complainants do not allege that the PVC procedure is applicable to any of the other raw materials identified by the complainants with respect to their MEP-related claims.

1490. Exhibit JE-127, Annex 3.

1491. *2004 PVC Notice*, para. 4 (Exhibit JE-122).

any contract that does not bear the CCCMC PVC chop.[1492] Penalties may also be imposed against exporters that forge PVC chops.[1493] Exporters of yellow phosphorus may submit contract information electronically for verification.[1494] Online instructions indicate that a contract will only pass "price-review" if "the contract price less the transportation fee is greater or equal to the coordinated price".[1495]

7.1050 The complainants submit that the *CCCMC PVC Rules*, *Online PVC Instructions*, *Customs Export Price Review Rules*, *the Customs Export Price Review Coordinating Rules*, and the *Provisional Rules on Export PVC*, in particular, continued to be available and effective after 26 May 2008, and thereby maintained in place the PVC export clearance process.[1496] The complainants submit that price data and screenshots of online web pages from 2008 confirm that China continued to apply the PVC export clearance process to exporters of yellow phosphorus, even after the apparent repeal of the PVC procedure on 26 May

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1492. *2004 PVC Notice*, para. 2 (Exhibit JE-122).

1493. *2004 PVC Notice*, para. 4 (Exhibit JE-122).

1494. See *Online PVC Instructions* (Exhibit JE-123), Sections 1, 4.

1495. *Online PVC Instructions* (Exhibit JE-123), Section 9(2).

1496. United States' first written submission, para. 361; European Union's first written submission, paras. 365; Mexico's first written submission, para. 364.

2008.[1497] The complainants submit that a computer screen snapshot for an exporter submitting contract information for CCCMC verification and chop dated 2008 reveals an industry coordinated price of US$8000 per metric tonne FOB for yellow phosphorus.[1498] The complainants contend that a note on this form indicates that the contract will be approved in cases where the contract price is more than or equivalent to the coordinated price.[1499] In addition, the complainants argue that a 15 October 2009 screenshot shows that CCCMC measures implementing the PVC procedure, including the *CCCMC PVC Rules*, and Online Verifications and Certification Operating Steps, remained available on the CCCMC website after the alleged repeal of the PVC procedure.[1500]

7.1051 China disputes that any measures were in effect after 26 May 2008 that authorized application of the

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1497. United States' first written submission, paras. 357, 360; European Union's first written submission, paras. 361, 364; Mexico's first written submission, paras. 360, 363; United States' second written submission, paras. 448, 450; European Union's second written submission, para. 172; Mexico's first written submission, paras. 365, 368; CCCMC PVC Online Input Screen Shots (May 2008), at pages 1-4 (Exhibit JE-124); Screenshot capture, Exhibit JE-127.

1498. CCCMC PVC Online Input Screen Shots (May 2008), at pages 1-4 (Exhibit JE-124).

1499. United States' first written submission, para. 226; European Union's first written submission, paras. 230; Mexico's first written submission, para. 229.

1500. United States' first written submission, para. 227; European Union's first written submission, paras. 231; Mexico's first written submission, para. 230; Exhibit JE-127.

PVC export clearance. China considers the fact that the *CCCMC PVC Rules* and the *CCCMC Online PVC Instructions* may have been found on the CCCMC website on 28 May 2008 or 15 October 2009 does not establish that the PVC procedure continued in use after the repeal of measures establishing the PVC system.[1501] China argues that the lack of any requirement or reference to the PVC procedure in the 2008-2010 Customs Handbook confirms that the PVC procedure was Discontinued.[1502] Regardless, China argues that the PVC system in China was confirmed to be repealed in its entirety by a 2010 Circular.[1503]

7.1052 Finally, China argues that price data submitted by the complainants for yellow phosphorus does not demonstrate that prices were coordinated to prevent or restrict exportation. Contrary to the complainants' assertions that a coordinated price of US$8000 per metric tonne FOB for yellow phosphorus in May 2008, China submits that export prices were permitted below US$8000 per metric tonne FOB in May 2008.[1504]

7.1053 The complainants dispute China's conclusion on price data for yellow phosphorus. The complainants submit that the price of yellow phosphorus "uniformly surged" in

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1501. China's first written submission, para. 839.

1502. China's first written submission, paras. 843.

1503. *2010 Circular of the Ministry of Commerce and the General Administration of Customs on Abolishing Two Documents Regarding Price Review of Export Commodities by Customs*, 16 August 2010 (Exhibit CHN-434).

1504. China's first written submission, para. 851, Exhibits CHN-361, CHN-362.

the United States and Europe, and stayed above the level of US$8000 per metric tonne FOB "beginning soon after the end of May in June 2008" until November 2008. The complainants add that prices of yellow phosphorus exports to the United States were "almost identical" to those to the European Union during that timeframe.[1505] Thus, the complainants argue that China's presentation of data showing that the prices fell below US$8000 per metric tonne FOB in 2007 and early 2008, but not after May 2008, does not rebut their allegation that China imposed an MEP requirement for yellow phosphorus. Moreover, they submit that exports of yellow phosphorus below US$8000 per metric tonne in early May 2008 accounted for 2.8% of exports for that month, and that overall, only 2.5% of yellow phosphorus exports throughout 2008 fell below US$8000 per metric tonne FOB.[1506]

7.1054 The Panel determined in its 1 October 2010 preliminary ruling that all of the measures identified in connection with the PVC procedure were outside the Panel's terms of reference. Therefore the Panel will not reach findings on these measures. To the extent the Panel were to consider these measures in its analysis, those measures in place at the time of the Panel's establishment would be relevant. As explained in paragraphs XX above, in general, only measures that were in force when the

1505. United States' second written submission, para. 391; European Union's second written submission, para. 172; Mexico's first written submission, para. 394.

1506. United States' second written submission, para. 394; European Union's second written submission, para. 172; Mexico's first written submission, para. 397.

Panel was established on 21 December 2009 form the basis of its terms of reference.[1507] The *2010 Circular*[1508] retroactively confirms the repeal of the PVC procedure in 26 May 2008. However, the complainants have alleged that China in fact imposed the PVC customs clearance procedure between 26 May 2008 and issuance of the 2010 Circular.

7.1055 Articles 9 and 23 of China's *Customs Law* provide that all goods for exportation must be approved by China's customs authorities. In this context, the *2002 PVC Notice* and *2004 PVC Notice* confirm that 35 products, including yellow phosphorus are subject to the PVC procedure. Its second and fourth paragraphs indicate that products may not be exported that do not bear the CCCMC "chop" or seal. Appendix 2 of the *2004 PVC Notice* confirms that exports will be rejected that do not conform to MOFCOM and GAC rules. The *CCCMC PVC Rules* and *Online Verification and Certification Operating Steps* in its step 9, further confirm the designation of commodity branches and the use of coordinated export prices and a mineral and chemical commodity pre-verification and chop system for certain products, including yellow phosphorus.

7.1056 The complainants acknowledge that the *2004 PVC Notice* superseded the *2002 PVC Notice*, and that the *2008 PVC Notice* repealed the *2004 PVC Notice* on 26

1507. The Panel observes, however, that its decision to assess the complainants' claims here does not foreclose the possibility of considering 2010 measures in other contexts.

1508. *2010 Abolition of Price Review of Export Commodities* (Exhibit CHN-434).

May 2008.[1509] However, the complainants allege that the *Customs Export Price Review Rules*, *Customs Export Price Review Coordinating Rules* and *Provisional Rules on Export PVC* continued to be effective after this date.[1510]

7.1057 The 2008 PVC Notice unequivocally repeals the *2004 PVC Notice* on 26 May 2008.[1511] The Panel has no evidence that the *Customs Export Price Review Rules*, *Customs Export Price Review Coordinating Rules* and *Provisional Rules on Export PVC* continued to be in force after this date. Accordingly, the Panel has no basis to conclude that the PVC procedure continued in effect, as the complainants allege, on the face of the Chinese instruments before the Panel.

7.1058 The complainants refer in particular to a webpage screenshot of the CCCMC online PVC interface, dated 28 May 2008, and a screenshot of *CCCMC PVC Rules* and *Online PVC instructions*, dated 15 October 2009, in arguing that the PVC procedure continued to be employed by China's customs officials even after the apparent repeal of the PVC procedure on 26 May 2008.

1509. United States' first written submission, para. 360; Exhibit JE-125; Exhibit CHN-2.

1510. United States' first written submission, para. 361; European Union's first written submission, para. 365; Mexico's first written submission, para. 364.

1511. Exhibit CHN-125, stating "it is decided to repeal the MOFCOM and General Administration of Customs Communication No. 36 of the year 2003 [the *2004 PVC Notice*]. The present communications takes effect on the day it is published."

7.1059 The Panel notes that the screenshot of the CCCMC online PVC interface was taken two days after the repeal of the 2004 PVC Notice. In addition, the Panel is hesitant to conclude that the PVC procedure continued in effect solely on the basis of screenshots of *CCCMC PVC Rules* and *Online PVC instructions* taken on 15 October 2009. In the Panel's view, the failure to update a website, does not on its own provide evidence to make conclusions contrary to the express language of the 2008 PVC Notice that the PVC would no longer be applied to exports of subject goods, including yellow phosphorus. In addition, as noted by China, the complainants have not even submitted a screenshot of the CCCMC website closer to the date of the Panel's establishment on 21 December 2009 in support of their argument that the PVC was effective at the time of the Panel's establishment despite the apparent formal repeal of the PVC procedure.[1512]

7.1060 Finally, the complainants submit that an analysis of price data for exports of yellow phosphorus in May 2008 and beyond confirms that China had in place a coordinated price for yellow phosphorus after the alleged formal repeal of the PVC procedure, and enforced this price at the time of customs clearance through the PVC procedure. Evidence provided by the complainants[1513] and China[1514] shows an increase in the export price of yellow phosphorus beginning in May 2008, for example, from prices below US$3 per kg during May 2008 and prior

1512. China's first written submission, para. 60.

1513. Exhibit JE-173.

1514. Exhibits CHN-361 and CHN-362.

months to prices above US$5 per kg from June 2008 until November 2008.[1515] This appears to be confirmed by Exhibit JE-173.

7.1061 In the Panel's view, the mere submission of price data for yellow phosphorus alone is insufficient to conclude the existence of a coordinated price for yellow phosphorus, and by extension, that a coordinated price was enforced through application of the PVC procedure. The Panel concluded above that the PVC procedure was formally repealed on 26 May 2008, upon publication of the *2008 PVC Notice*. Price increases or conformity of export prices to the United States, European Union and other destinations may result from a multitude of market factors. The Panel cannot draw the conclusion that an increase or trends in export prices alone support the conclusion that China enforced an MEP requirement for yellow phosphorus through the PVC, in the face of evidence that this procedure was repealed.

7.1062 Based on the foregoing reasons, it appears that China did not formally have in place or otherwise maintain a PVC customs clearance procedure on exporters of yellow phosphorus at the time of the Panel's establishment on 21 December 2009.

(c) Conclusions on whether China imposes an MEP requirement on exporters of bauxite coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc

7.1063 The Panel concludes above that the *2001 CCCMC Charter*, interpreted in light of the *CCCMC Export*

1515. Exhibit CHN-362.

Coordination Measures, *CCCMC Bauxite Branch Coordination Measures*, CCCMC Brochure and identified CCCMC website pages, authorized the CCCMC to set and coordinate export prices for all branches under its authority, including for all the raw materials identified in connection with the complainants' claims, namely bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc. The Panel further concludes that, at the time of the Panel's establishment on 21 December 2009, China through the *1996 Export Price Penalties Regulations* imposed penalties on exporters that fail to set prices in accordance with the coordinated export prices. In addition, the Panel concludes that, under the *Measures for Administration of Licensing Entities*, China imposed penalties on licensing entities that issued licences to exporters that did not follow the coordinated export prices.

7.1064 In light of these conclusions, the Panel additionally finds that the authority to coordinate export prices and enforce these prices through the imposition of penalties on exporting enterprises, or on export licensing entities that issue licences to exporters that do not follow the coordinated export prices, amounts to a requirement to coordinate export prices for the raw materials at issue. The requirement derives from the fact that failure to comply with the coordinated price will result in punishment that rises to a level to prevent an enterprise from exporting altogether. In addition, under the measures at issue, export licensing entities may be punished for failing to enforce a given coordinated price. The measures do not permit exporting enterprises to deviate from coordinated export prices, or otherwise grant discretion to export

licensing agencies to make exceptions. Thus, coordinated export prices must be adhered to whenever set by the CCCMC.

7.1065 Finally, the Panel concludes that the complainants failed to establish that China formally had in place or otherwise maintained a PVC customs clearance procedure on exporters of yellow phosphorus at the time of the Panel's establishment on 21 December 2009. The Panel does not consider the absence of this final customs clearance step sufficient to conclude that exporting enterprises are not otherwise required to adhere to coordinated export prices. In addition, only one of the raw materials at issue – yellow phosphorus – was subject to the PVC clearance procedure.

7.1066 Accordingly, the Panel concludes that China, through the measures in the Panel's terms of reference, imposed an MEP requirement on exporters of bauxite, coke, fluorspar, magnesium, silicon carbide, yellow phosphorus and zinc at the time of the Panel's establishment. Coordinated export prices were enforced through the imposition of penalties on exporters and licensing entities that failed to conform to coordinated export prices. The Panel finds that this system continued at least until the issuance of a resolution on 28 July 2010.[1516] Having concluded so, the Panel will consider the complainants' claims under Article XI:1, X:1 and X:3(a) of the GATT 1994.

1516. *CCCMC Resolution on Abolition of Coordination and Administration of Export Commodities* (Exhibit CHN-4).

3. Whether a requirement to export at a coordinated minimum export price constitutes a restriction on exportation that is inconsistent with Article XI:1 of the GATT 1994

7.1067 The complainants argue that the requirement to export at a coordinated minimum export price amounts to a restriction that is inconsistent with Article XI:1 of the GATT 1994 because such a requirement prohibits exportation if the price of the export is lower than the floor established by the minimum export price. In the complainants' view, this amounts to a "limiting condition" that is a restriction within the meaning of Article XI:1 of the GATT 1994.[1517] They argue that China's system has an impact on prices and distorts world market conditions for the raw materials at issue because of China's alleged position as a leading producer of these materials.[1518]

7.1068 China argues that Article XI:1 does not broadly prohibit regulation, or any condition imposed on exports or imports *per se*. Rather, China argues that Article XI:1 prohibits WTO Members from imposing a condition on exportation or importation that has a "limiting effect" on the *quantity* of exports or imports. China argues that in determining compliance of an MEP with Article XI:1, the relevant feature of an MEP requirement to consider is the benchmark price used to determine the MEP and

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1517. United States' second written submission, para. 396; European Union's second written submission, para. 172; Mexico's first written submission, para. 399.

1518. Complainants' joint opening oral statement at the first substantive meeting, para. 32.

its relationship to the relevant world trading price for a particular product. Such analysis cannot assume that the MEP requirement is necessarily higher than the market price, such that it would restrict exports; according to China, this must be proved.[1519]

7.1069 The complainants request the Panel to conclude that a requirement to export at a coordinated minimum export price constitutes a restriction on exportation that is inconsistent with Article XI:1 of the GATT 1994.

7.1070 The Panel concluded above that the operation of the measures at issue amounts to a requirement to coordinate export prices. In addition, the Panel concluded that the measures at issue, including those that delegate authority to the CCCMC, are attributable to China and may be subject to WTO dispute settlement. The Panel will consider below whether requirement to export at a coordinated minimum export price constitutes a measure that may be challenged under Article XI:1.

7.1071 Article XI of the GATT 1994 is entitled "General Elimination of Quantitative Restrictions". Article XI:1 provides:

> "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

1519. China's first written submission, para. 860.

7.1072 Thus, Article XI:1 requires the elimination of import and export restrictions or prohibitions made effective through quotas, import or export licences or *other measures*.

7.1073 The GATT panel in *Japan – Semi-Conductors* found that "Article XI:1, unlike other provisions of the General Agreement, did not refer to laws or regulations but more broadly to 'measures'. This wording indicated clearly that any measure instituted or maintained by a contracting party which restricted the exportation or sale for export of products was covered by this provision, irrespective of the legal status of the measure."[1520] The panel in *India – Quantitative Restrictions* found that the text of Article XI:1 of the GATT 1994 is "broad" in scope, providing for a general ban on import or export restrictions or prohibitions "other than duties, taxes or other charges".[1521]

1520. GATT Panel Report, *Japan – Semi-Conductors*, para. 106.

1521. The panel in India – Quantitative Restrictions found:

"[T]he text of Article XI:1 is very broad in scope, providing for a general ban on import or export restrictions or prohibitions 'other than duties, taxes or other charges'. As was noted by the panel in Japan – Trade in Semi-conductors, the wording of Article XI:1 is comprehensive: it applies 'to all measures instituted or maintained by a [Member] prohibiting or restricting the importation, exportation, or sale for export of products other than measures that take the form of duties, taxes or other charges.' The scope of the term 'restriction' is also broad, as seen in its ordinary meaning, which is 'a limitation on action, a limiting condition or regulation'."

(original footnotes omitted).

7.1074 In line with these views, the Panel concludes that the requirement to export at a coordinated minimum export price, which is operated through a series of measures that are attributable to China, is a type of measure that may be challenged under Article XI:1.[1522] Accordingly, the Panel will next consider whether the alleged MEP requirement is a "prohibition or restriction" on exportation under Article XI:1.

7.1075 The applicability of Article XI:1 to minimum price requirements has been previously addressed by two GATT panels. In *EEC - Minimum Import Prices*, a GATT panel examined a requirement that importers of tomato

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Panel Report, *India – Quantitative Restrictions*, para. 5.128. See also Panel Report, *EC – Poultry*, para. 7.450; Panel Report, *Colombia – Ports of Entry*, para. 7.226.

1522. The Panel considers its conclusion is consistent with the view taken by the GATT panel on *Japan – Semi-Conductors*. The panel in that dispute concluded that a "complex of measures", comprising "an administrative structure" created by the Japanese government amounted to "a coherent system restricting the sale for export of monitored semi-conductors at prices below specific company-specific costs to markets other than the United States, inconsistent with Article XI:1." See GATT Panel Report on *Japan – Semi-Conductors*, paras. 106, 117. The panel concluded that measures including repeated direct requests by the Japanese government, statutory requirements, and price monitoring, among others, operated to "facilitate strong peer pressure to comply with requests by [the Japanese government]." Even in the absence of what it described as "formal legally binding obligations", the panel concluded that the "complex of measures exhibited the rationale as well as the essential elements of a formal system of export control". See para. 117.

concentrates provide additional security to guarantee that the free-at-frontier price plus the customs duty payable would equal or exceed a determined minimum import price. The security would be forfeited in proportion to any quantities imported at a price lower than the minimum price. Subject to an assessment of a possible exemption under Article XI:2(c)(i) and (ii), the panel found that the minimum import price system, as enforced by the additional security, was a restriction "other than duties, taxes or other charges" within the meaning of Article XI:1.[1523]

7.1076 In *Japan – Semi-Conductors*, a GATT panel examined whether measures applied to exports of semi-conductors at prices below company-specific costs constituted a restriction under Article XI:1 of the GATT 1994. The panel expressly referred to the rationale applied in *EEC - Minimum Import Prices* in concluding that a regulation preventing exportation below a minimum price level was a restriction on exportation inconsistent with Article XI:1.[1524]

7.1077 The panel in *India – Quantitative Restrictions* concluded that the scope of the term "restriction" is "broad", and, in terms of its ordinary meaning, is "a

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1523. GATT Panel Report, *EEC – Minimum Import Prices*, para. 4.9.

1524. GATT Panel Report, *Japan – Semi-Conductors*, para. 106. The Panel concluded, that the "complex of measures" amounted to "a coherent system restricting the sale for export of monitored semi-conductors at prices below specific company–specific costs to markets other than the United States, inconsistent with Article XI:1." GATT Panel Report, *Japan – Semi-Conductors*, para. 117.

limitation on action, a limiting condition or regulation."[1525] The panel in *India – Autos* also elaborated on the meaning of the term "restriction":

> "On a plain reading, it is clear that a 'restriction' need not be a blanket prohibition or a precise numerical limit. Indeed, the term 'restriction' cannot mean merely 'prohibitions' on importation, since Article XI:1 expressly covers both 'prohibition or restriction'. Furthermore, the Panel considers that the expression *'limiting condition'* used by the *India – Quantitative Restrictions* panel to define the term 'restriction' and which this Panel endorses, is helpful in identifying the scope of the notion in the context of the facts before it. That phrase suggests the need to identify not merely a condition placed on importation, but a condition that is limiting, i.e., that has a limiting effect. In the context of Article XI, that limiting effect must be on importation itself."[1526]

7.1078 More recently, the panel in the *Colombia – Ports of Entry*, after reviewing several GATT and WTO cases,

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1525. Panel Report, *India – Quantitative Restrictions*, para. 5.128.

1526. Panel Report, *India – Autos*, para. 7.270 (underlining and emphasis original). Several WTO panels have cited with approval the interpretation that the term "restriction" in Article XI:1 refers to the imposition of a "limiting condition": see Panel Report, *Colombia – Ports of Entry*, paras. 7.233-7.234; Panel Report, *Brazil –Retreaded Tyres*, para. 7.371; Panel Report, *Dominican Republic – Import and Sale of Cigarettes*, paras. 7.252 and 7.258.

concluded that "restrictions" in the sense contemplated by Article XI:1 refers to measures that create uncertainties and affect investment plans, restrict market access for imports or make importation prohibitively costly.[1527] In making an assessment of whether a measure constitutes a restriction, the panel considered it important to look at the design of the measure and its potential to adversely affect importation.[1528]

7.1079 The term "restriction", as discussed by these three panels, aligns with the dictionary definition of the term "restriction", which is "a thing which restricts someone or something, a limitation on action, a limiting condition or regulation".[1529]

7.1080 The Panel concluded above that, through a series of measures at issue, China requires exporting enterprises to export at set or coordinated export prices or otherwise face penalties, including the possibility of having one's exporting rights revoked.

7.1081 The Panel agrees with the approach set out in *EEC - Minimum Import Prices* (taken in the case of importation) and followed in *Japan – Semi-Conductors*,

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1527. Panel Report, *Colombia – Ports of Entry*, para. 7.240. The panel in *Argentina – Hides and Leather* recalled that "Article XI:1, like Articles I, II and III of the *GATT 1994*, protects competitive opportunities of imported products not trade flows". See Panel Report, *Argentina – Hides and Leather*, para. 11.20.

1528. Panel Report, *Colombia – Ports of Entry*, para. 7.240, see also Panel Report, *US – Poultry (China)*, para. 7.454.

1529. *Shorter Oxford English Dictionary*, 5th edn., L. Brown (ed.) (Oxford University Press, 2002), Vol. 2, p. 2554.

that a measure preventing exportation below a minimum price level inherently constitutes a "restriction" that is inconsistent with Article XI:1. In the Panel's view, the authority to determine and require exporters to follow a particular export price level and not deviate below it without facing what amounts to a strict penalty, including revocation of the right to export altogether, has the potential to restrict trade. The restriction or limitation on exportation arises from the possibility that a price is set at such a level that exporters cannot find a potential buyer in order to sell their product. Products that would have otherwise been exported would remain in the domestic market as a subsidiary effect of this.[1530] The Panel consider

1530. A requirement to set an export price *above* the price that would otherwise prevail under free trade would have the effect of reducing export volumes. Under this scenario, exporters would be unable to export the same volume of their product for sale at that higher price. Unsold exports would remain in the domestic market that otherwise would have been sold abroad. The reduction in exportation would amount to a limiting effect on exportation with the additional effect of driving down the domestic price of the particular product due to increased domestic supply. Such an outcome would appear to result regardless of whether a particular exporting country has a relatively substantial share of production or a limited share. The only difference to note is the following: if an exporting country controls a substantial or monopoly share of the world export market for a particular product (due to its position as a leading or sole producer of that product), the world price would increase as a result of the imposition of a minimum export price requirement that is set above the trading price that would prevail under free trade. In this case, export volumes would decrease but would not fall to zero. If an exporting country were to control only a small share of the world export market for a particular product, the world price would not be affected by the imposition of a minimum export requirement above the trading price that would prevail under free trade. As a result, exports of that product would fall to zero.

the very *potential* to limit trade is sufficient to constitute a "restriction[] ... on the exportation or sale for export of any product" within the meaning of Article XI:1 of the GATT 1994.[1531] The Panel considers this view is consistent with the conclusion by the panel on *Colombia – Ports of Entry* that any measure that creates uncertainty as to the ability to import/export, and otherwise "compete" in the marketplace, violates Article XI:1.[1532]

7.1082 At the time of the Panel's establishment, the Panel concludes that, under the measures at issue, China required exporting enterprises to export at set or coordinated export prices or otherwise face penalties, including the possibility of having one's exporting rights revoked. The Panel concludes that this requirement constitutes a "restriction[] ... on the exportation or sale for export of any prod[illegible] within the meaning of Article XI:1 of the GATT 1994 because this requirement to export at a coordinated minimum export price by its very nature has a limiting or restricting effect on trade.

1531. In other contexts, panels and the Appellate Body have concluded that the *potential* to violate a provision was sufficient to result in inconsistency. Under Article III, for instance, the GATT panel on *EEC – Oilseeds I* examined whether a purchase regulation which did not necessarily discriminate against imported products in all cases but was *capable* of doing so was inconsistent with Article III:4. That panel concluded that the "exposure of a particular imported product to a risk of discrimination" constitutes a form of discrimination sufficient to violate Article III:4. See GATT Panel Report, *EEC – Oilseeds I*, para. 141.

1532. Panel Report, *Colombia – Ports of Entry*, para. 7.240.

4. Whether China's administration of the minimum export price requirement through the PVC procedure as it applies to yellow phosphorus is inconsistent with China's obligations under Article X:3(a) of the GATT 1994

7.1083 The complainants additionally submit that China acts inconsistently with its obligations under Article X:3(a) of the GATT 1994 by authorizing the CCCMC to participate in the PVC customs clearance procedure in respect of yellow phosphorus. The complainants allege that the CCCMC's involvement permits the flow of exporters' sensitive commercial information to representatives of parties with interests that are in conflict with those of the exporters.[1533] In their view, this contravenes China's obligation to administer its laws, regulations, decisions, and rulings pertaining to restrictions on exports in an impartial and reasonable manner under Article X:3(a) of the GATT 1994.[1534]

7.1084 China submitted that it formally repealed the PVC procedure in May 2008 when it "abandoned" price coordination, and therefore requests the Panel to reject the complainants' claims.[1535] China argues that the

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1533. The PVC procedure requires exporters of yellow phosphorus to submit their export contracts and special PVC forms to the CCCMC for verification.

1534. United States' first written submission, para. 364, European Union's first written submission, para. 368; Mexico's first written submission para. 367.

1535. China's first written submission, para. 867.

Panel cannot make recommendations regarding the administration of measures that have ceased to exist.[1536]

7.1085 The Panel recalls from it 1 October 2010 preliminary ruling its finding that all of the measures identified in connection with the PVC procedure were outside the Panel's terms of reference because the complainants' Panel Requests did not identify clearly and specifically the measures under challenge.[1537] Accordingly, the Panel considers it is outside of its mandate to rule on the complainants claims' that China's administration of the minimum export price requirement through the PVC procedure as it applies to yellow phosphorus is inconsistent with under Article X:3(a).

7.1086 Even if the Panel were to have concluded otherwise, the Panel recalls its conclusion in paragraph 7.1062 above that "China did not formally have in place or otherwise maintain a PVC customs clearance procedure on exporters of yellow phosphorus at the time of the Panel's establishment on 21 December 2009". Accordingly, for this further reason, the Panel considers it would be inappropriate to consider the complainants' claim.

7.1087 Consequently, the Panel does not make findings under Article X.3(a) of the GATT 1994 on whether China is in breach of its obligations in respect of China's administration of the minimum export price requirement through the PVC procedure as it applies to yellow phosphorus.

1536. China's first written submission, para. 867.

1537. See paragraphs 1.10 to 1.13 above; Annex F to these Reports.

5. Whether China's has failed to publish measures through which China administers its alleged minimum price requirement inconsistently with China's obligations under Article X:1 of the GATT 1994

7.1088 The complainants submit that China has breached its obligations under Article X:1 by failing to publish promptly the: (i) *2001 CCCMC Charter*; (ii) *CCCMC Branch-Specific Coordination Measures*; (iii) *Rules for Coordination with Respect to Customs Price Review of Export Products*; (iv) *Notice of the Rules on Price Reviews of Export Products by the Customs*; and (v) *Provisional Rules on Export PVC*.

7.1089 The Panel recalls from it 1 October 2010 preliminary ruling its finding that only six measures referred to by the complainants in both their consultation requests and Panel Requests would form part of the Panel's terms of reference.[1538] Of the five measures identified in the preceding paragraph, only the *2001 CCCMC Charter* falls within the Panel's terms of reference. Accordingly, the Panel will consider the complainants' claim in respect of this measure only.

7.1090 The complainants submit that the CCCMC Charter is the CCCMC's constitution setting forth the mission, functions, authority, and rules and regulations of the CCCMC. In addition, the complainants submit that China has described the Chamber of Commerce as "the instrumentality through which [MOFCOM] oversees

1538. See paragraphs 1.10 to 1.13 above; Annex F to these Reports.

and regulates the business of importing and exporting [] products in China".[1539] They argue that the *2001 CCCMC Charter* is therefore a law or regulation of general application made effective by a WTO Member pertaining to restrictions on exports, and is subject to the obligations of Article X:1 of the GATT 1994.[1540]

7.1091 China submits that the complainants have not adduced argument and evidence showing that, in terms of Article X:1, the Charter is a "law[], regulation[], judicial decision[] and administration ruling[] of general application", within the meaning of Article X:1.[1541] China asserts that such a determination "must be based primarily on the content and substance of the instrument, and not merely on its form or nomenclature".[1542] China argues that the *2001 CCCMC Charter* does not contain either imperative or authoritative rules of conduct that would bring it within the scope of Article X:1.[1543] Even

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1539. United States' first written submission, para. 208, citing Brief of Amicus Curiae: MOFCOM p. 9 (Exhibit JE-98); United States' response to Panel question No. 67 following the second substantive meeting, para 133; The European Union and Mexico refer to the United States' response to Panel question No. 67 following the second substantive meeting.

1540. Complainants' response to Panel question No. 68 following the second substantive meeting, para. 134.

1541. China's second written submission, para. 580.

1542. China's comments on the complainants' responses to Panel question No. 68 following the second substantive meeting, referring to Panel Report, *EC – IT Products*, para. 7.1023.

1543. China's comments on the complainants' responses to

assuming Article X:1 would apply, China argues that the *2001 CCCMC Charter* was formally replaced by the *2010 CCCMC Charter*. China argues that obliging it to publish an expired measure serves no purpose.[1544]

7.1092 As noted in footnote 1445, the *2010 CCCMC Charter* has a different "essence" than the *2001 Charter* that was in place at the time of the Panel's establishment because it appears to remove all authority from the CCCMC to coordinate export prices. Many of the provisions of the *2010 CCCMC Charter* are similar to those in the *2001 CCCMC Charter*, and in some cases identical. However, in view of the at least one significant difference just noted between the two charters, with regard to the role of the CCCMC, publication of the *2010 CCCMC Charter* cannot constitute publication of the former. Moreover, at the request of the complainants, the Panel will only assess the WTO consistency of the measures in existence on 21 December 2009, in this case the *2001 CCCMC Charter*, while taking note that the *2010 CCCMC Charter* no longer provides for the CCCMC to coordinate export prices. Accordingly, the Panel will not consider the *2010 CCCMC Charter* in addressing whether China failed to publish the *2001 CCCMC Charter* inconsistently with its obligations under Article X:1 of the GATT 1994.

7.1093 Article X:1 of the GATT 1994 provides in relevant part:

Panel question No. 68 following the second substantive meeting, referring to Panel Report, *EC – IT Products*, para. 7.1027.

1544. China's second written submission, para. 582.

> "Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to ... restrictions or prohibitions on ... exports ... shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. ..."

7.1094 The complainants in this dispute must thus establish that the relevant measure falls within the scope of "laws, regulations, judicial decisions and administrative rulings of general application made effective by" China that pertains to restrictions or prohibitions on exports; if so, China must promptly publish the minimum export price requirement in such a manner as to enable governments and traders to become acquainted with it.

7.1095 The panel on *EC – Selected Customs Matters* found that "laws, regulations, judicial decisions and administrative rulings of general application" described in Article X:1 of the GATT 1994 are those "laws, regulations, judicial decisions and administrative rulings that apply to a range of situations or cases, rather than being limited in their scope of application".[1545] The Panel on *EC – IT Products* concluded that the phrase "laws, regulations, judicial decisions and administrative rulings" "reflects an intention on the part of the drafters to include a wide range of measures that have the potential to affect trade and traders."[1546] In *US – Underwear*, the Panel explained that an administrative order was of "general application"

1545. Panel Report, *EC – Selected Customs Matters*, para. 7.116.

1546. Panel Report, *EC – IT Products*, para. 7.1026.

"to the extent that the restraint affects an unidentified number of economic operators, including domestic and foreign producers."[1547] The term "made effective" in the context of Article X:1 has so far only been addressed by the panel on *EC – IT Products*. This panel held that the term "made effective" covers measures that were brought into effect, or made operative, in practice and is not limited to measures formally promulgated or that have formally entered into force.[1548]

7.1096 The Panel recalls its earlier conclusion at paragraph 7.1006 above that the *2001 CCCMC Charter* is a measure attributable to China and thus is a measure that can be challenged under the WTO dispute settlement proceedings. In reaching this conclusion, the Panel noted China's acknowledgement that it delegated certain implementing authority to the CCCMC to coordinate export prices. This is reflected in statements made by China's MOFCOM in the context of US domestic court proceedings prior to this dispute. For this reason, the Panel considered that actions undertaken by the CCCMC with respect to minimum export price requirements at issue in this dispute are attributable to China.

7.1097 Thus, the *2001 CCCMC Charter* grants authority to the CCCMC and sets out the functions, structure and operation of the CCCMC. In particular it directs the CCCMC to "provide[] coordination, guidance and consultation services", including to "[d]isseminate and implement[] the state's foreign trade laws, regulations,

1547. Panel Report, *US – Underwear*, para. 7.65.

1548. Panel Report, *EC – IT Products*, para. 7.1047.

guidelines, and policies" and "coordinate and direct import and export trade activities by business within the industries".[1549] The scope of authority is further indicated in the description of the Charter's overall objectives, which include to "coordinate and direct import and export trade activities of Metals, Minerals & Chemicals Industries".[1550]

7.1098 In the Panel's view, China's statement of the authority vested in the CCCMC, and the cited provisions of the *2001 CCCMC Charter* make clear that the *2001 CCCMC Charter* is a measure that has the potential to affect trade and traders, including a wide array of domestic and foreign economic operators, in particular, the "trade activities" of business within the broad metals, minerals and chemicals industries. Accordingly, in line with the Appellate Body's view on "measures of general application" and previous panels' views on the scope of Article X:1, we conclude that the *2001 CCCMC Charter* is a law, regulation, judicial decision or administrative ruling of general application within the meaning of Article X:1.

7.1099 China submits that a resolution of 21 February 2001 confirms that the *2001 CCCMC Charter* replaced the *1994 CCCMC Charter*.[1551] Thus, from this statement it appears that the *2001 CCCMC Charter* became effective at a point in 2001.

1549. *2001 CCCMC Charter*, Article 6(1) (Exhibit JE-87).

1550. *2001 CCCMC Charter*, Article 3 (Exhibit JE-87).

1551. China's response to Panel question No. 69 following the second substantive meeting, paras 341-343; See Letter by the China CCCMC, 3 December 2010 (Exhibit CHN-541).

7.1100 The Panel further recalls its finding in paragraph 7.1017 above that the reference to "coordinat[ion]" of "export trade activities" in Article 3 of the *2001 CCCMC Charter* is broad enough to encompass price coordination, and that the CCCMC was indeed authorized to coordinate export prices under the *2001 CCCMC Charter*.[1552] The Panel concluded that the requirement to export at a coordinated minimum export price by its very nature has a limiting or restricting effect on trade, and therefore constitutes a restriction within the meaning of Article XI:1. Accordingly, for purposes of its Article X:1 assessment, the Panel further concludes that the *2001 CCCMC Charter* pertains to restrictions or prohibitions on exports within the meaning of Article X:1.

7.1101 Finally, the complainants assert that the *2001 CCCMC Charter* was not published on the CCCMC website until well into 2009, after the request for consultations in this dispute had been made, and therefore was not "published promptly" in a manner consistent with the requirements of Article X:1. The concept of "prompt" is not addressed in Article X:1 or elsewhere in the WTO Agreement. In the Panel's view, an analysis of whether a measure was published promptly requires a reference point, some act or thing to act as a point of comparison

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1552. The Panel recalls that Article 3 of the *2001 CCCMC Charter* specifies that the CCCMC is to "coordinate and direct import and export trade activities of Metals, Minerals & Chemicals industries". Article 6(3) provides that the CCCMC shall "promote the industry's self-discipline", including adopting "sanction measures against breaching companies.

so as to determine whether publication was prompt.[1553] It would seem an appropriate reference point in this instance should approximate the date when the *2001 CCCMC Charter* became effective. The Panel noted China's confirmation that that the *2001 CCCMC Charter* replaced the preceding Charter on 21 February 2001. Due to its publication in 2009, it therefore appears that *2001 CCCMC Charter* was only published on the CCCMC website eight years after the date that it had been made effective.

7.1102 Consequently, for the foregoing reasons, the Panel finds that China failed to publish promptly the *2001 CCCMC Charter* in such a manner as to enable governments and traders to become acquainted as is required under Article X:1 of the GATT 1994. Accordingly, the Panel concludes that China has acted inconsistently with Article X:1.

6. Summary

7.1103 At the time of the Panel's establishment, the Panel concludes that, under the measures at issue, China required exporting enterprises to export at set or coordinated export prices or otherwise face penalties, including the possibility of having one's exporting rights revoked. The Panel concludes that this requirement, which was formally in force in China at the time of the Panel's establishment, constitutes a "restriction[] ... on the exportation or sale for export of any product" within

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1553. The panel in *EC – IT Products* stated that "the meaning of prompt is not an absolute concept, i.e. a pre-set period of time applicable in all cases": see Panel report, *EC – IT Products*, para. 7.1074.

the meaning of Article XI:1 of the GATT 1994 because this requirement to export at a coordinated minimum export price by its very nature has a limiting or restricting effect on trade. The Panel also concludes that China failed to publish promptly the *2001 CCCMC Charter* in such manner as to enable governments and traders to become acquainted as is required under Article X:1 of the GATT 1994. The Panel does not make findings under Article X:3(a) of the GATT 1994 on whether China is in breach of its obligations in respect of China's administration of the minimum export price requirement through the PVC procedure as it applies to yellow phosphorus.

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 The Panel issues its findings in the form of a single document containing three separate Reports with common sections on the Panel's findings and separate sections on the Panel's conclusions and recommendations for each complaining party. The Panel's findings incorporate the conclusions of its preliminary rulings, attached to these Reports as Annex F.

2003 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE

[TABLES INTENTIONALLY OMITTED]

Export Regulation

China accepted in its WTO accession agreement that it would only maintain restrictions on exports (other than duties, taxes or other charges) where justified under WTO rules. Article XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) generally prohibits WTO members from maintaining export restrictions, although certain limited exceptions are allowed.

China also agreed to eliminate all taxes and charges on exports unless they were included in Annex 6 to the Protocol of Accession or are applied in conformity with Article VIII of GATT 1994. Article VIII of GATT 1994 only permits fees and charges limited to the approximate cost of services rendered and makes clear that they shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes.

Since its accession to the WTO, China has continued to impose restrictions and fees on exports of a few raw materials and intermediate products not included in Annex 6. In an attempt to justify these restrictions and fees, MOFTEC has invoked an exception in Article XX of GATT 1994 that permits a WTO member to impose restrictive export measures relating to the conservation of exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption, and provided they

are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. Fluorspar is one example of a raw material that is still subject to this type of export regulation. China imposes quotas and license fees on fluorspar exports, apparently with the objective of supporting China's domestic users of fluorspar, which face no comparable restrictions.

In both 2002 and 2003, the United States raised its concerns about continuing export regulation of raw materials and intermediate products bilaterally with China. The United States also worked with other WTO members with an interest in this issue, including Japan, and it raised this issue during the transitional reviews of China's compliance efforts before the Council for Trade in Goods in November 2002 and November 2003. To date, however, China has refused to modify its export regulation practices in this area. The United States will continue to strongly urge China to lift these restrictions in 2004.

EXCERPTS OF THE UNITED STATES TRADE REPRESENTATIVE'S 2004 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE, DATED DECEMBER 11, 2004

2004 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE

December 11, 2004

United States Trade Representative

[TABLES INTENTIONALLY OMITTED]

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Export Regulation

China's WTO accession agreement reinforces China's obligation to only maintain export restrictions allowed under WTO rules. Article XI of the General Agreement on Tariffs and Trade 1994 (GATT 1994) generally prohibits WTO members from maintaining export restrictions (other than duties, taxes or other charges), although certain limited exceptions are allowed.

China also agreed to eliminate all taxes and charges on exports, except as included in Annex 6 to the Protocol of Accession or applied in conformity with Article VIII of GATT 1994. Article VIII of GATT 1994 only permits fees and charges limited to the approximate cost of services rendered and makes clear that any such fees and charges shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes.

Since its accession to the WTO, China has continued to impose restrictions on exports of a few raw materials

and intermediate products. In an attempt to justify these restrictions, MOFCOM has cited Article XX(g) of GATT 1994, which permits a WTO member to impose measures relating to the conservation of exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption, and provided they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

In 2004, China's export restrictions on blast furnace coke, a key steel input, began to have a significant, adverse effect on U.S. integrated steel producers and their customers. China is the world's largest producer of coke, with total production of 177.7 million MT in 2003, as well as the world's most significant exporter of coke, supplying more than one-half of the world's traded coke. In 2004, China initially imposed an export quota of 8.3 million MT, down from the 2003 level of 14.3 million MT. In the first six months of 2004, China's export quota, combined with the illegal sale of export quota certificates, caused the export price for Chinese coke to rise to the vicinity of $500 per MT, more than three times the price in 2003. This price rise triggered a similar rise in world coke prices, while Chinese domestic prices ranged between $150 and $200 per MT.

The United States began to raise its concerns with China's coke export restrictions during high-level meetings in Washington in April 2004. The United States urged China to put the practice of using export restrictions behind it, not just for coke but also for other products.

The EC also became active in addressing this issue, as European steel producers normally source one-third of their coke needs from China. In May 2004, the EC reportedly used the threat of WTO dispute settlement to obtain China's agreement to guarantee European purchasers 4.5 million MT of Chinese coke in 2004, the same level that they had purchased in 2003.

As the U.S. industry became more concerned about decreased access to Chinese coke, along with soaring prices, the United States continued to engage China on this issue, both through high-level contacts and in a series of other meetings in May, June and July 2004 in Beijing. The United States sought to ensure that U.S. purchasers would have sufficient access to Chinese coke in 2004, pressed China to eliminate immediately the high export license fees resulting from the sale of export licenses, and urged China to establish a timetable for ending its export quota system. The EC and other WTO members also continued to raise their concerns with China.

In late July 2004, China raised the 2004 quota allotment to 12.3 million MT, and it indicated that it would eventually be raising the quota to the 2003 level of 14.3 MT. It did not, however, provide for country-specific quota allocations, instead continuing to leave it to individual purchasers to secure their own coke needs. Shortly thereafter, MOFCOM also issued an urgent notice reiterating that the sale of export licenses was illegal, calling for investigations into this practice by provincial MOFCOM authorities, and demanding reports by August 15.

In the ensuing months, with the increased supply of Chinese coke and the crackdown on the sale of export

licenses, the export prices for Chinese coke declined significantly, nearly reaching $200 per MT. U.S. industry was also able to obtain a substantially larger quantity of Chinese coke in 2004 than it had in 2003.

In September and November 2004, the United States continued to press China for complete elimination of the annual export quota on coke. Along with other WTO members, including the EC and Japan, the United States raised its concerns at the WTO during the transitional reviews before the Committee on Market Access and the Council for Trade in Goods as well as during side meetings. The United States also reiterated its concerns in bilateral meetings in Beijing in November 2004. The United States will continue to pursue this issue vigorously in 2005.

Fluorspar is another example of a raw material subject to export restrictions. China imposes quotas and license fees on fluorspar exports, apparently with the objective of supporting China's domestic users of fluorspar, which face no comparable restrictions. Since shortly after China's WTO accession, the United States has raised its concerns about these restrictions bilaterally with China. The United States has also worked with other WTO members with an interest in this issue, including Japan, and it raised this issue during the transitional reviews of China's compliance efforts before the Council for Trade in Goods in 2002 and 2003 and both the Committee on Market Access and the Council for Trade in Goods in 2004. To date, however, China has refused to modify its practices in this area. The United States will continue to urge China to lift these restrictions in 2005.

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EXCERPTS OF THE UNITED STATES TRADE REPRESENTATIVE'S 2006 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE, DATED DECEMBER 11, 2006

2006 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE

December 11, 2006

United States Trade Representative

[tables intentionally omitted]

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Export Regulation

China's WTO accession agreement reinforces China's obligation to only maintain export restrictions allowed under WTO rules. In this regard, Article XI of the GATT 1994 generally prohibits WTO members from maintaining export restrictions (other than duties, taxes or other charges), although certain limited exceptions are allowed. China also agreed to eliminate all taxes and charges on exports, except as included in Annex 6 to the Protocol of Accession or applied in conformity with Article VIII of GATT 1994. Article VIII of GATT 1994 only permits fees and charges limited to the approximate cost of services rendered and makes clear that any [36] such fees and charges shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes.

Nevertheless, since its accession to the WTO, China has continued to impose restrictions on exports of certain raw materials and intermediate products. In

an attempt to justify these restrictions, MOFCOM has often cited Article XX(g) of GATT 1994, which permits a WTO member to impose measures relating to the conservation of exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption, and provided they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

In 2004, China's longstanding export restrictions on blast furnace coke, a key steel input, began to have a significant, adverse effect on U.S. integrated steel producers and their customers. China was (and is) the world's largest producer of coke as well as the world's most significant exporter of coke, supplying more than one-half of the world's traded coke. Even though its total production was projected to (and did) rise to nearly 210 million metric tons (MT) in 2004, China initially imposed an export quota of 8.3 million MT, down from the 2003 level of 14.3 million MT. In the first six months of 2004, China's export quota, combined with the illegal sale of export quota certificates, caused the export price for Chinese coke to rise to the vicinity of $500 per MT, more than three times the price in 2003. This price rise triggered a similar rise in world coke prices, while Chinese domestic prices ranged between $150 and $200 per MT, giving Chinese steel producers a significant competitive advantage over their foreign competitors and helping to fuel the rapid expansion of China's steel sector.

The United States began to raise its concerns with China's coke export restrictions during high-level meetings in

Washington in April 2004. The United States urged China to put the practice of using export restrictions behind it, not just for coke but also for other products. The United States also began to coordinate with other concerned WTO members, particularly the EC and Japan, which had become active in addressing this issue. In late July 2004, following sustained engagement by the United States, which included both high-level contacts and a series of meetings with MOFCOM officials in Beijing, the Chinese government raised the 2004 quota allotment to 12.3 million MT and indicated that it would eventually be raising the quota to the 2003 level of 14.3 million MT. Shortly thereafter, MOFCOM also issued an urgent notice reiterating that the sale of export licenses was illegal and called for investigations and expedited reports on this practice by provincial MOFCOM authorities. In the ensuing months, with the increased supply of Chinese coke and the crackdown on the sale of export licenses, the export prices for Chinese coke declined significantly, reaching nearly $200 per MT. U.S. industry was also able to obtain a substantially larger quantity of Chinese coke in 2004 than it had in 2003.

In 2005, the United States continued to press China for complete elimination of the annual export quota on coke, as did other WTO members. The United States raised its concerns in bilateral meetings with China and at the WTO during the transitional reviews before the Committee on Market Access and the Council for Trade in Goods, but made no progress.

In 2006, the United States continued to press China to eliminate the export quota on coke, both bilaterally during Steel Dialogue meetings in March and October

and at the transitional reviews before the Committee on Market Access and the Council for Trade in Goods, held in October and November. Even though the export price for Chinese coke remained relatively low compared to the $500 per MT price of mid-2004, the export quota still kept world coke prices artificially high in 2006, and a significant differential still existed between China's domestic coke prices and world coke prices. However, the Chinese government continued its efforts to direct market outcomes by maintaining the export quota on coke. Indeed, in October 2006, China took the additional step of imposing a five percent duty on exports of coke.

Fluorspar is another example of a raw material subject to export restrictions, as China imposes both quotas and license fees on fluorspar exports. The objective of these export restrictions appears to be to support China's downstream producers of the numerous products derived from fluorspar, such as non-ozone depleting hydrofluorocarbon refrigerants and foam blowing agents. While their foreign competitors pay higher world market prices for fluorspar, China's downstream producers benefit from the artificially low domestic prices for fluorspar and are able to export their products around the world at prices well below those of their foreign competitors.

Since shortly after China's WTO accession, the United States has raised its concerns about the export restrictions on fluorspar bilaterally with China. The United States has also worked with other WTO members with an interest in this issue, including Japan, and raised this issue during the annual transitional reviews before the Committee on Market Access and the Council for Trade in Goods. To

date, however, China has refused to modify its practices in this area. In fact, China has increased the protection afforded to its downstream producers by lowering the export quota on fluorspar each year and, in October 2006, by imposing a 10 percent duty on exports of fluorspar.

In 2007, the United States will continue to work with interested trading partners on these issues. In coordination with those trading partners, the United States will urge China to act as a responsible stakeholder in the international trading system and eliminate the export restrictions that it maintains on raw materials such as coke and fluorspar.

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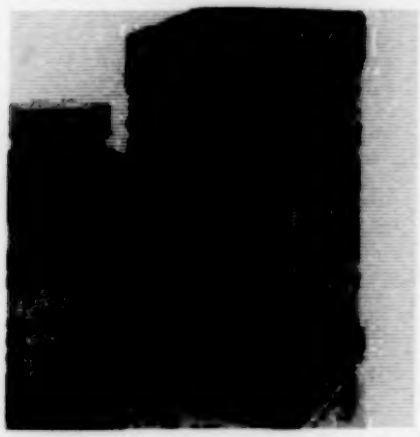
ASSORTED PRESS REPORTS RELATING TO THE VITAMIN C LITIGATION

GCR
Global Competition Review

US vitamin fine "unfair and inappropriate" says Mofcom

Katy Oglethorpe • Thursday, 21 March 2013 *(4 hours ago)*

Officials from China's Ministry of Commerce (Mofcom) have criticised the decision of a US federal jury to fine two Chinese vitamin manufacturers, warning that it could harm relations with US businesses.



Vitamins made by Aland, the first company to settle

The District Court in Brooklyn last week ordered Hebei Welcome Pharmaceutical and a related company, North China Pharmaceutical Group, to pay a class of Vitamin C buyers US$162 million for allegedly conspiring with other Chinese rivals to fix prices on vitamins sold to US consumers.

The vitamin makers say they were legally required to set price standards or face government-sanctioned penalties limiting their export capabilities. During the trial, a former Mofcom official testified that, indeed, the government set prices in the Chinese Vitamin C market and expected all of the companies in the industry to abide with them.

But the jury rejected the defence, known as the foreign sovereign compulsion doctrine.

Mofcom is now urging the court to reverse its decision, which a spokesperson this week called "unfair and inappropriate".

"The behaviour of Chinese enterprises was in full compliance with China's laws and regulations," says the spokesperson. "The relevant Chinese enterprises implemented the mandatory requirements of the government departments and behaved appropriately.

"We hope the US court fully takes into account the special nature of the facts of the case [and] fully respects the sovereignty of the Chinese government, as well as fully safeguards the proper international order."

Mofcom says the ruling was "clearly contrary to the principles of international comity".

"This erroneous decision, if not corrected, will cause problems for the international community and international enterprises, and will eventually harm the interests of the United States due to the increase of international disputes," says Mofcom.

Ranis, a food company based in Elizabeth, New Jersey, led a group of plaintiffs that gained class certification in

January. The company claimed that from 2001 to 2006, four Chinese vitamin makers participated "in a conspiracy to fix prices and limit supply" to increase prices in the US.

Jiangsu Nutraceutical and Northeast Pharmaceutical Group settled their alleged parts in the conspiracy for US$10.5 million and US$1 million respectively.

John Terzaken, partner at Allen & Overy and the former director of criminal enforcement at the US Department of Justice's antitrust division, says China should expect to adapt to non-domestic antitrust laws.

"It is axiomatic that if a multinational wants to reap the benefits of selling in a particular jurisdiction, it must also be ready to accept responsibility for following the laws of that jurisdiction," he says. "A competition regulator like Mofcom, whose responsibility is to protect businesses and consumers from anti-competitive acts, can hardly be surprised that companies proven to have fixed prices would be held accountable to pay damages to victims harmed by that conduct."

Terzaken says this is "particularly true" given recent prosecutions in the liquid crystal display (LCD) case, where China's National Development and Reform Commission (NDRC) fined a cartel 353 million renminbi (US$56.7 million) – by far the agency's first global cartel decision.

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China Criticizes U.S. Ruling on Vitamin C Makers

By LAURIE BURKITT

BEIJING—Beijing lashed out Tuesday at a U.S. court decision finding Chinese manufacturers of vitamin C liable for price fixing, saying the ruling would have negative global repercussions.

Officials from China's Ministry of Commerce urged the U.S. court to reverse its decision, saying the ruling was unfair to the Chinese companies, Hebei Welcome Pharmaceutical Co. and affiliated company North China Pharmaceutical Group Corp.

The two companies were ordered last week to pay $162 million in damages for the antitrust claims in a civil trial in federal court in Brooklyn.

"If they don't correct the mistake, it will bother the global society and global companies, which eventually harms U.S. interests by increasing national disputes," a government spokesman said at a news briefing Tuesday.

Experts say that strong language from China's government raises the possibility of a tit-for-tat response. "This is a not-too-subtle hint that we can expect retaliation against American companies doing business in China," said James Zimmerman, partner with the Beijing office of the international law firm of Sheppard Mullin Richter & Hampton LLP.

The U.S. and China are tussling over trade issues on a number of fronts, including China's dominance in the production of "rare earth" minerals, used in manufacturing, and state support in the ailing solar-panel industry.

North China Pharmaceutical plans to appeal the fine, the state-run Xinhua news agency said Sunday.

Plaintiffs, including a Texas animal-feed company and a New Jersey vitamin distributor, alleged the Chinese vitamin C makers voluntarily formed an illegal price-

fixing cartel that increased prices significantly and resulted in tens of millions of dollars of added costs for U.S. consumers since late 2001.

The vitamin C makers argued that Beijing forced them to coordinate pricing and output.

Attempts to blame the price fixing on directives from the Chinese government ran counter to China's declarations to U.S. government agencies and the World Trade Organization that it doesn't compel price fixing for any exported product, the plaintiffs argued.

The raw vitamins from the Chinese companies were used as food and beverage ingredients, consumer vitamin supplements and animal products, the plaintiffs said.

China's Commerce Ministry said it would continue to support the Chinese companies. It previously filed papers supporting the companies' position and urged that the case be thrown out, saying it couldn't be resolved without interfering with China's affairs.

MOFCOM's Shang says US judgment in vitamin C case shows 'disrespect'

MOFCOM to support Chinese company's appeal in case

Case's reversal at appellate court level seen possible

A key Chinese antitrust regulator said he is "very dissatisfied" with the judgment from a US district court against Chinese vitamin C manufacturers following a recent high-profile antitrust jury trial, saying the decision indicates "disrespect" for the Chinese government.

Shang Ming, director general of the Anti-Monopoly Bureau under the Ministry of Commerce (MOFCOM),

said the Chinese government should have the last say on the interpretation of Chinese law, not a US court judge. He also said MOFCOM, which has the responsibility to give guidance to Chinese companies on antitrust matters overseas, will support the Chinese company's decision to appeal the judgment.

Shang made the comments at a symposium held by the China Institute of International Antitrust and Investment in Beijing Friday (22 March).

"In this case, MOFCOM and myself, during the course of the case had submitted amicus curiae briefs more than three times to the court, representing the Chinese government," Shang said. "There is one situation where the companies in a monopoly agreement may be exempted: that is if they are bound by the local law or act under the administrative order of the government. That is precisely what we wanted to prove."

Shang said MOFCOM's previous requirement that export companies must be disciplined by trade associations under the "export pre-examination and approving system" was a product of China's structural reform in trade. That system was scrapped in 2008.

"[The vitamin C companies' price] agreement was reached under this circumstance," Shang said. "But unfortunately, the judge did not accept this argument."

"Here I would like to express my deep dissatisfaction toward the US judge, because Chinese law should be interpreted by China's administrative body, or the agency that has the right to do so, not by a [foreign] judge," Shang said. "The fact that he did not accept our interpretation, I believe, shows disrespect, to say the least."

The vitamin C antitrust case generated much discussion at the symposium, attended by antitrust attorneys, as well as Chinese and foreign antitrust regulators, with some questioning whether the judgment was reasonable.

Willard Tom, a partner at Morgan Lewis and a former general counsel of the US Federal Trade Commission (FTC), said the US court system has generally moved away from "deferring to vague expressions" of foreign intent as a defence in cartel cases. And the judge had to take into consideration not only MOFCOM's amicus brief, but also the plaintiff's argument that the vitamin C manufacturers acted voluntarily, and MOFCOM's position that it no longer practices export licensing.

"I'm not sure why one would expect to succeed simply on the basis of an amicus filing by a foreign government," Tom said. "These foreign sovereignty compulsion defenses are very very difficult to succeed on. ... Was this district court judge unreasonable? We will see if the appellate court reverses [the judgment]."

Chen Huanzhong, vice chairman of the anti-monopoly law committee of the All China Lawyers Association (ACLA), China's bar association, said the vitamin C case has gone beyond a legal question to the level of diplomacy and the China-US bilateral relationship.

He said he believes the Chinese company may have a chance to reverse the judgment at a higher level US court, which will have more authority to consider foreign sovereign defenses.

The US District Court, Eastern District of New York, on 14 March entered judgment for USD 153.3m after trebling

a jury's USD 54.1m verdict in favor of a direct purchaser class on its allegations that Chinese corporations participated in an illegal cartel to fix prices and limit supply for export of vitamin C to the US.

The jury concluded that Hebei Welcome Pharmaceutical and its parent North China Pharmaceutical Group Corp. (NCPGC) "knowingly entered into an agreement or conspiracy with the purpose of or predictable effect of fixing the price or limiting the supply of Vitamin C."

The jury rejected the defendants' argument that they were compelled by the Chinese government to enter into the agreements from 1 December, 2001 to 30 June, 2006 and that they "faced the prospect of penalties or sanctions for not complying with the directives or commands of the Chinese Government."

Shang's comments Friday echoed MOFCOM spokesman Shen Danyang's stern words 19 March, when he called the vitamin C trial judgment "unfair" and "inappropriate."

Shen said that the heavy penalties for these Chinese companies were inappropriate, as they violated the "doctrine of international comity", the principle of "foreign sovereign compulsion defense" and the "act of state doctrine", and that they also went against the spirit of the rule of law that the US has been claiming.

He said the US should give full respect to China's sovereignty. He also called the judgment a "wrong decision," which, if not corrected, could promote international disputes and harm American interests.

by Joy C. Shaw and Eliot Gao in Beijing

MINISTRY OF COMMERCE
PEOPLE'S REPUBLIC OF CHINA

Regular Press Conference of the Ministry of Commerce on March, 19 2013

March 28, 2013 - 14:57 BJT (18:57 GMT) MOFCOM

Dear friends from the Press,

Welcome to the press conference today. I'm ShenDanyang, spokesman of the Ministry of Commerce. I am very glad to meet you all again and make a briefing on China's business performance in January - February this year, and answer your questions.

I. Domestic Market Operation

Retail sales of consumer goods in January and February amounted to 3.781 trillion Yuan with anominal increase of 12.3% year-on-year and 2.4 percentage point lower as compared with that of the same period of previous year. The actual growth was 10.4% year-on-year, when price fluctuation excluded, 0.4 percentage point lower as compared with that of the same period of previous year.

1. Consumptionin rural areas grew faster than that of urban areas.Urban consumptionin urban areas was up by 12.1%, while rural consumption saw an increase of 13.4%. The growth rate of rural consumption exceeded that of urban areas again, 1.3 percentage points higher as compared with that of urban consumption.

2. Sales of housing and leisure goods increased. Affected by the soon-to-expired policy of "Appliances to the Countryside" and promotion during Chinese New Year by

lunar calender, sales value of home appliances, furniture and building and decorating materials in 3,000 key retailersmonitored by MOFCOM rose 20.1%, 4.2% and 0.2% respectively as compared with that of previous year. The growth rate of household appliances and audiovisual equipment, and sports and entertainment products in enterprises above designated size was 19.6 and 8.4 percentage points faster than that of the same period over previous year. Sales of furniture and building materials rose 20.9% and 17.7%, which significantly higher than the average level of sales of enterprises above designated size.

3. Demands for automobiles and communication commodities slowed down. Sales of communication commodities in 3,000 key retailersmonitored by MOFCOM rose 4%, dropped 8.6 percentage points as compared with that of previous year. The growth rate of automobiles, petroleum and petroleum products, and communication equipment in enterprises above designated size was down by 5.8%, 9.2% and 32.7% respectively as compared with that of previous year.

4. Sales by medium and large sized circulation enterprises saw a slight slowdown. Sales of 3,000 key retailers monitored by MOFCOM was up by 7.9% year-on-year, 0.4 percentage point lower than that of the same period of previous year. Retail sale of consumer goods in enterprises above designated size rose 10.2% yet the growth rate was lower than the average level of national consumption growth.

5. Consumption in catering dropped significantly. Catering revenue grew 8.4%, 4.9 percentage points

lower as compared with that of previous year and was the lowest since July, 2003. Large sized and high-end catering consumption dropped significantly. Revenue of catering enterprises above designated size was down by 3.3% year-on-year. Sales of key catering enterprises monitored by MOFCOM dropped 2.3% as compared with that of previous year.

6. Consumer prices maintained steadily. The consumer price in January and February rose 2.6%. Among that, February saw an increase of 3.2%, 1.2 percentage points higher than that of January, setting the record high in eight months. In February, CPI rose 1.9% year-on-year driven by foodstuff, and foodstuff accounted for 73% of CPI increase. The wholesale price of beef, eggs, peanut oil and mutton monitored by MOFCOM rose by the largest margin of 31.7%, 18.3%, 17.8% and 14.2 respectively, while that of pork and fruit dropped 4.1% and 5.1% respectively.

II. Foreign Trade

According to Customs statistics, total value of our import and export in January and February were of 3.83 trillion Yuan (US$609.31 billion), up by 14.2%year-on-year, exchange rate fluctuation excluded (same as below). Among that, exports amounted to 2.05 trillion Yuan (US$326.73 billion), up by 23.6%; and imports amounted to 1.78 trillion Yuan (US$282.58 billion), up by 5%. Trade surplus was 277.82 billion Yuan (US$44.15 billion). Trade deficit last year was US$4.78 billion. The main features of foreign trade are as follows:

1. Trade with U.S. and ASEAN was steadily up and with HK and South Africa increased rapidly. China-U.S. trade in January and February rose 14.8%, and China-ASEAN

trade was up by 23.4%. Mainland China-HK and China-South Africarose 58.7% and 70.1% respectively, 44.5 and 55.9 percentage points higher than the overall growth rate of our foreign trade. Besides, China-EU trade rose 3.2%, and China-Japan trade dropped 8.2%.

2. Export by the central and western Chinaremained robust; export by Guangdong and Fujian province in eastern China increased significantly and export growth in other provinces remained steady. In January and February, growth rate of exports of Sichuan,Chongqing, Jiangxi and Anhui was 72.7%, 54.8%, 140.7% and 138.1% respectively; growth rate of export of Guangzhou was 34.2%, still ranking first, and the growth rate of Fujian was 32%.

3. Export by general trade and import by processing trade grow significantly. Total value by general trade in January and February was US$316.62 billion, up by 11.5%. Among that, exports amounted to US$159.79 billion, up by 29.9%; imports registered US$156.84 billion, dropped by 2.6%. Import and export by processing trade was US$202.58 billion, with an increase of 7.6%, among that, export registeredUS$128.30 billion, up by 5.9% while import amounted to US$74.28 billion, up by 10.5%.

4. Private enterprises become the main driving force in export and import; exports of state-owned enterprises and foreign-invested enterprises grew slowly, while imports showed negative growth. In January and February, export by private enterprises was US$134.82 billion, up by 61.1%, 37.5 percentage points higher overall growth rate of export, while import by private enterprises registered US$81.84 billion, up by 35.3%, 30.3 percentage points

higher overall growth rate of import. Export by SOEs was up by 3.6%, while import dropped 6.8%. Export by foreign-invested enterprises rose 7.0%, while import was down by 1.9% over the previous year.

5. Exports of mechanic and electronic products grew steadily, and expot of labor-intensive products grew significantly. Exports of mechanic and electronic products in January and February registered US$187.81 billion, up by 20%, accounting for 57.5% of total exports; while imports was US$117.63 billion with an increase of 9.1%, 4.1 percentage points higher than that of the total imports. Total export of high-tech products was US$99.18 billion and rose by 26.2%, 2.6 percentage points higher than that of the total exports. Import of high-tech products registered US$79.83 billion and rose by 20.1%, 15.1 percentage points higher than that of total imports. Total export of clothing, textiles, footwear, furniture, plastic products, bags and suitcases and toys was US$69.57 billion and rose by 40.3%. Import of iron ore, crude oil, soybean and copper dropped 1.5%, 2.4%, 9.0% and 27.8% respectively, while import of coal and refined oil rose 34.3% and 6.1% respectively.

III. Foreign investment

From January to February of 2013, 2,915 foreign-invested enterprises were newly established, down by 3.00% year on year; realized FDI reached US$17.484 billion, down by 1.35% year on year. Among that, in February, 1,032 foreign-invested enterprises were newly approved, down by 35.62% year on year; realized FDI amounted to US$8.214 billion, up by 6.32% year on year, turning

positive for the first time after eight consecutive months of negative growth. The main features of foreign investment during January-February period are as follows:

1. Foreign investment in service sector saw a certain amount of growth. From January to February, realized FDI in service sector reached US$8.449 billion, up by 5.49% year on year, accounting for 48.32% of the total national amount over the same period. Realized FDI in agriculture, forestry, animal husbandry, and fishery amounted to US$177 million, down by 43.22% year and year, taking up 1.01% of the national total in foreign investment absorption. Realized FDI in manufacturing sector registered US$7.472 billion, down by 10.64% year on year, accounting for 42.74% of the national total over the same period.

2. Investments from the EU countries grew relatively faster. From January to February, realized FDI from EU 27 countries reached US$1.214 billion, up by 34.01% year on year. Realized FDI from the US registered US$497 million, down by 5.37% year on year. Realized FDI from ten countries/regions in Asia (Hong Kong, Macao, Taiwan, Japan, the Philippines, Thailand, Malaysia, Singapore, Indonesia and South Korea) amounted to US$15.178 billion, down by 1.31% year on year. Among that, realized FDI from Japan reached US$1.269 billion, down by 6.70% year on year.

3. Realized FDI in the central China continued to maintain a good momentum. From January to February, realized FDI in the central China was US$1.496 billion, up by 4.76% year on year, accounting for 8.56% of the total national amount; the figure in the eastern China was US$14.912

billion, down 1.58% year on year, accounting for 85.29% of the national total; the figure in the western China was US$1.075 billion, down 5.95% year on year, taking up 6.15% of the national total.

IV. Investment and economic cooperation overseas

Direct investment overseas. From January to February of 2013, Chinese investors had directly invested in 1,187 overseas companies in 133 countries and regions, and total direct investments in non-financial sectors reached US$18.388 billion, up by 147.3% year on year. From January to February, investments by mainland China in the seven economies including Hong Kong, ASEAN, EU, Australia, the US, Russia and Japan reached US$15.893 billion, accounting for 86.4% of the total national direct investment overseas over the same period. Among that, the investments in Hong Kong, ASEAN, EU, Australia and the US were up by 155.8%, 114%, 81.9%, 281.8% and 145.7% respectively while that in Russia and Japan were down by 46% and 31% respectively. From January to February, direct investment overseas by provinces reached US$3.4 billion, accounting for 18.5% of the total investment overseas over the same period.

Contracted projects overseas. From January to February of 2013, turnover of China's contracted projects overseas amounted to US$13.04 billion, up by 13.4% year on year, and value of newly-signed contracts was US$20.23 billion, up by 39.8% year on year. The projects each with a contract value above US$50 million were 91 (52 over the same period of last year), with a total value of US$14.92 billion, accounting for 73.8% of the total value of newly-signed contracts. Among that, the projects each

with a contract value above US$100 million were 49, an increase of 15 over the same period of last year. By the end of February 2013, total contract value of the projects overseas reached US$1.0184 trillion with the realized turnover of US$668.6 billion.

Labor service cooperation overseas. From January to February of 2013, laborers sent abroad reached 57 thousand, an increase of one thousand over the same period of last year. Among that, laborers sent abroad for contracted projects were 30 thousand and that for labor cooperation projects were 27 thousand. By the end of February, all laborers sent overseas totaled 819 thousand, an increase of 20 thousand over the same period of last year.

21st Century Business Herald: What's your comment on strong exports and weak imports in first two months of 2013 and the huge trade surplus? Will there be any policies to promote imports? How do you view the foreign trade situation for the whole year, and will the goal of 10% trade growth be realized? Thank you.

ShenDanyang: According to Customs statistics, export growth was indeed strong in the first two months, while there was a relatively slow import growth. As you said, we have strong exports and weak imports. This has caused some concerns, and we are studying the reasons behind it.

A number of factors contributed to the fast export growth in January-February. There were three main causes according to our preliminary analysis: Firstly, the policies to stabilize trade growth continue to exert its effects. For example, we have policies on tax reduction, speeding up the export refund process and financial supports, which

will still remain stable and effective this year. These policies have notably promoted export growth.

Second, foreign trade enterprises are taking active steps to transform their development mode, engage in restructuring, and foster innovation and competitive advantages. Such efforts have led to a rapid growth of exports of machinery and electronic products and high-tech products. High-tech exports rose by 26.2% in the first two months, and exports of machinery and electronic products rose by 20.1%, of which integrated circuits, mobile phones and parts, automatic data processing equipment and parts, motorcycles, power assisted bicycles, bicycles, watches, lamps and lighting devices were up by over 15%.

Third, some external markets have shown signs of recovery. Of course, there were some other factors, such as seasonal factors, and the relatively small export volume in the same period of 2012. Another factor is that there was a trade deficit in January and February 2012, with imports growth outpacing export growth, while the situation reversed in 2013.

Besides, we are also looking at other possible factors. It is difficult to make an accurate judgment for the whole year based only on the statistics of the first two months. We will have to wait and see.

ShenDanyang: Accordig to Customs statistics, China's imports fell by 15.2% year-on-year in February, mainly due to seasonal factors including the Chinese Lunar New Year. According to seasonally adjusted Customs statistics, imports growth in February saw a slight rise of 6.5%. According to MOFCOM analysis, import growth

rate in first two months was down as compared with that of 2012, mainly due to weak domestic demand and falling commodity prices in international market. For example, prices of several types of bulk commodities fell sharply in the first two months. Billet, cotton and natural rubber fell by 26.9%, 20.1% and 13% respectively, and steel, iron ore and crude oil were down by 12.2%, 11.2% and 4.1% respectively. China imports these commodities in large quantities, so falling import prices are not necessarily a bad thing.

As proposed in this year's government work report, we need to pursue at the same time stable exports and increasing imports. Guided by such a principle, MOFCOM will continue to take measures to promote the growth of imports and at the same time stabilize exports. We will take three measures. First, we will improve the structure of import tariffs, and adjust the Catalogue of Encouraged of Imports, and promote import growth through fiscal and financial measures. Macroeconomic policies and import growth are connected, and we need to use fiscal, taxation, financial and other policy measures in tandem.

Second, we will strengthen the building of an import promotion system, give support to the African Commodities Exhibition and the South Asian Merchandise Show, and organize enterprises to carry out imports promotion overseas. Some countries that have a trade deficit with China are asking whether China could expand imports. We would say that we will make efforts to encourage enterprises to expand imports. However, the decisions have to be made by enterprises of the two sides. China cannot act alone and the other country should also take

measures to promote trade. For example, we often say to our American friends that they should also make efforts to promote exports to China. All countries including the US can cooperate with China's trade promotion agencies to do more trade promotions. Trade promotion measures will bring positive impacts.

Third, we will increase the number of innovation demonstration areas for increasing imports at a stable pace, and give play to the role of import trade clustersin increasing imports in the neighboring areas. Thank you.

CCTV: According to the statistics you just released, foreign capital utilization posted a negative growth in January-February 2013, but there was a growth of about 6% in February. Does that mean China's foreign capital utilization has turned toward the better? And what's your view on the situation for the whole year? Thank you.

ShenDanyang: China's foreign investment utilization posted small amplitude fluctuations recently due to slow global economic recovery and less than abundant global investment. Our actualized foreign investment declined for a few successive months in 2012. However, against the global backdrop, we believe that the overall situation of China's foreign investment utilization maintained stable development. In 2012, global cross-border direct investment fell by 18% and foreign investment inflows into Asia decreased by 9.5%. Although foreign investment inflow into China declined by 3.7%, we still had the best performance among major foreign investment host countries. In February 2013, China's actualized foreign investment saw a slight rebound, with a growth of 6.32%, which was the first positive growth after eight consecutive months of negative growth. It proved, to a certain extent,

the competitiveness of China's economy and recognition by international investors of China's investment environment and development prospects.

As for foreign investment utilization prospects for the whole year, it is difficult to predict whether the situation will improve for the whole year based on the statistics of in January and February alone. Generally speaking, foreign investment utilization in 2013 will be steady, and is unlikely to have big fluctuations. Thank you for your question.

China Business News: You just said that total retail sales of consumer goods had a nominal increase of only 12.3% in January-February 2013, and an actual increase of 10.4%, a pace much slower than before. What are the main causes for the slowdown of consumption growth? And what's your comment on the domestic consumption situation in 2013? Will MOFCO take any specific measures to expand consumption? Thank you.

ShenDanyang: As I just shared with you, nominalgrowth rate and actual growth rate of the total retail sales of consumer goods in January-February were down by 2.4 percentage points and 0.4 percentage points respectively. There were several underlying factors, including thecurbing of extravagantconsumption. The catering sector had a revenue increase of only 8.4% in the first two months, a growth rate of 4.9 percentage points lower. Especially, the revenue of catering enterprises above the designated size declined by 3.3%.So this is one factor.

Another factor is the growth of oversees travelling during such time as the Spring Festival of 2013. As a result, some consumption moved abroad. This might be another factor.

Of course, some believe that there are other factors such as the policies of certain cities on limiting car purchase and usage, high oil prices, parking difficulties, which slowed the consumption of automobiles and fuels. There could be more, and we are still making analysis. However, consumption did not trend notably downward, and the growth rate was only down by 0.4 percentage points.

Generally speaking, we are optimistic, for a good reason, on the situation of consumption in 2013. For example, in recent years, China's policies to promote consumption growth have been changed from short-term stimulus to cope with the international financial crisis into a long term fundamental mechanism. The government has released a number of policies conducive to stimulating consumption in the long run. Recently, the State Council approved and issued documents on deepening the reform of the income distribution system and promoting employment. The purpose is to increase the income of residents and increase employment, which will be conducive to expanding consumption. The State Council also issued documents on carrying out pilot programs on the new type of social pension insurance in rural areas and on improving the mechanism of essential drugs, announced policies for ensuring the basic livelihood of the low-income people, and reducingmedical costs, which will also help to enhance people's consumption capability and improve their consumption expectation. What's more, the State Council has issued the 12th Five-Year Plan Program for the Development of the Service Sector and the Outline for National Tourism and Leisure. These documents give priority to the development of domestic services such as housekeeping services, care for the aged and community-based care, in order to meet the basic needs of Chinese

families, require that the paid-vacation system be truly effective, and suggest exploring the feasibility of having Spring Break and Autumn Break for the students. Such initiatives will be conducive to release the consumption potential of domestic services and travel and leisure and increase total consumption.

In addition, many friends here may be interested to know that we will continue the "Subsidy Scheme on Energy-conserving Products" to subsidize consumers who purchase energy efficient products such as lightings, cars, air-conditioners, refrigerators, flat-panel TVs, washing machines, water heaters and desk computers, which will speed up the upgrading of electrical household appliances and promote green consumption. These policies will help solve such frequently discussed problems as "having no money to spend" or "being afraid to spend". Therefore, as long as the economy goes well, the consumption trend in 2013 should be promising. Of course, though there is great potential for expanding consumer spending, many difficulties exist. We must make efforts at all four fronts, namely increasing consumption capability, stabilizing consumption expectation, enhancing consumption willingness and improving consumption environment, in order to secure a steady growth of consumption.

Among these four aspects, MOFCOM is mainly responsible for improving consumption environment. Last year, the State Council promulgated Several Opinions on Deepening Circulation System Reform and Speeding up Development of Circulation Industry, or NO. 39 Document of the State Council; and issued the Comprehensive Work Plan on Lowering Circulation Cost and Enhancing Circulation Efficiency, which unveiled favorable policies

covering planning, tax, fiscal aspects, finance, land and fee reduction. These policies are conducive to lowering circulation cost and improving consumption environment. This year, MOFCOM will endeavor to do a good job in this aspect. Thank you for your question.

International Business Daily: My question is about the price-fixing case of Vitamin C. As we know, recently, media reported that a federal court in New York ruled over the price-fixing case involving North China Pharmaceutical Group Corp (NCPC) and its affiliated company, found that the two companies were engaged in price-fixing of vitamin C in the US in recent years. The report also said the Chinese Ministry of Commerce issued judicial document to support the position of the two companies and urged the withdrawal of the case. Could you please confirm if the above information is accurate? And what is the comment of MOFCOM? Thank you.

ShenDanyang: MOFCOM has learnt about the ruling of the US Federal Court on the antitrust case on vitamin C against Chinese companies, and we consider it to be unfair and improper. According to our understanding, the conduct of relevant Chinese companies totally conformed to the Chinese laws and regulations of the time. The companies concerned took the actionsin order to comply withthe compulsory requirements of the Chinese government. MOFCOM filed official written statements for three times in the form of amicus brief, and explicitly notified the US court that the charged Chinese enterprises acted on the government's requirement. It is totally improperfor the US court to impose heavy fine against Chinese enterprises for their lawful conducts. To take jurisdiction over Chinese enterprises' conducts resulting

from compulsory government requirements is obviously against the Comity principle and the Foreign Sovereign Compulsion Doctrine and Act of State Doctrine, and is inconsistent with the spirit of governance by law as always advocated by the US government. If such mistakes are not corrected, it will be worrisome forthe global society and companies, which will lead to increasinginternational disputes and eventually harm US interests.

We hope the US court can fully consider the facts of the case and the particularity of the Chinese economic reform being in the transition period, fully respect the sovereignty of the Chinese government, and maintain the order of the international community. We will continue to firmly support Chinese companies who comply with the laws to actively protect their legal rights and interests. Thank you.

Asahi Shimbun: President Xi Jinping is going to visit Russia. Would you brief us on the latest development in China-Russia trade and economic relations? In addition, recently, the Japanese government announced that it will take part in the TPP negotiations. How does China look at the relationship between TPP and China-Japan-ROK FTA? Are they complementary or competing? Thank you.

ShenDanyang: President Xi Jinping's visit to Russia will play a positive role in promoting the development of China-Russia trade and economic cooperation. Currently, the momentum of China-Russia trade and economic cooperation is good. The bilateral trade volume in 2012 hit the record high of US$ 88.16 billion, up by 11.2% year on year. China has been Russia's largest trade partner for three consecutive years. If the bilateral trade continues to grow at the current speed, the goal set up by the leaders

of our two nations to increase bilateral trade to US$ 100 billion in 2015 and US$ 200 billion in 2020 can certainly be achieved.

Investment cooperation betweenthe two countries is also speeding up, and has three characteristics: first, China's investment to Russia has been growing rapidly. According to Chinese statistics, by the end of 2012, the accumulated non-financial direct investment from China to Russia was US$ 4.42 billion, registering an average increase of over 40% over the past ten years. In 2012, China's investment to Russia was US$ 656 million, up by 116.2% year on year. Second, our cooperation on major projects goes smoothly. A number of large-scale cooperation projects in such fields as energy, nuclear energy, aerospace &aviation, science and technology and transportation, represented by such projects as China-Russia oil pipeline, Tianjin Oil Refinery, Tianwan Nuclear Power Station, R&D inlong-range wide-body aircraft and heavy-duty helicopter, and Tongjiang Railway bridge, have strongly supported the sustainable development of the bilateral trade and economic cooperation. Third, bilateral cooperation in the financial sector and cooperation between local regions and entrepreneurs of the two countries have also made new progress. We believe that the visit of President Xi will promote the speeding up of investment cooperation between the two sides.

As to Japan's taking part in the TPP negotiation as you just mentioned, we always hold the view that all economies in the world have the right to choose the path towards economic integration that suits their own national conditions and development level, and we have an open and inclusive attitude toward all cooperation that aims at

realizing regional economic integration. We also believe that the multilateral trading system that the vast majority of the countries in the world are parties to remains the main channel for promoting international trade liberalization, and that any regional and bilateral trade arrangements should be a useful complement to rather than a substitute for the multilateral trading system. We will keep contacts and communications with other parties, and carry out in-depth analysis of the potential impact of the above-mentioned negotiations. Meanwhile, as we all know, China will step up efforts on our own FTA strategy. Thanks for your question.

China News Service: According to media reports from Korea, at the end of March, Chinese, Japanese and Korean governments will meet for three days and hold the firstround of negotiations on China-Japan-ROK FTA. Could you please confirm? Can you share some specifics? Thank you.

ShenDanyang: Having consulted among the three sides, China, Japan and ROK will hold the firstround of China-Japan-ROK FTA negotiationsin Seoul, South Koreaon March 26-28, 2013. The representatives of the three nations will discuss the mechanism arrangement, negotiation fields and negotiation mode of the FTA negotiation. The three sides have agreed to hold three rounds of negotiations this year, first in Korea, then in China and finally in Japan. China, Japan and ROK are important economies in East Asia and have close trade and economic cooperation.To establish the FTA as soon as possible accords to the common interests of the three nations and is conducive to regional peace and development. We are of the view that, followingthe launch

of the China-Japan-ROK FTA negotiation, the stability of the relations among the three sides will be the political basis for smooth future negotiations. We would like to join efforts with Japan and ROK to promote China-Japan-ROK FTA negotiation to make positive achievements as soon as possible. Thank you.

Economic Daily: Judging from past experiences, spring is often a season of sluggish market for agro-products. Based on information available to MOFCOM so far, will it happen this year, and what kind of measures will MOFCOM adopt? Thank you.

ShenDanyang: Thanks for your keen observation. Indeed, according to past experiences, the sales of agro-products such as fruits and vegetables will decline after the Spring Festival, the price will drop and the market will become sluggish. Therefore, after this Spring Festival, MOFCOM has taken some target measures to strengthen market monitoring. We hope to provide guidance to farmers and to nip the problems in the bud.

We have noticed that recently lettuces from Pengzhou, Sichuan and Honghu, Hubei, apples from Yongjing, Gansu, and peppers and chayote from Hainan are difficult to sell. MOFCOM responded quickly, and launched the working mechanism for addressing difficulties in selling agricultural products. We also urged and guided local commerce authorities to work with relevant departments to intensify marketing efforts, make available better sales channels, strengthen the direct links between markets and farmers, and encourage enterprises to purchase and store. Such efforts have effectively mitigated the selling difficulties.

Similar situations may occur in some individual places and to some individual agricultural products. MOFCOM and local commercial departments have already established a set of plans to response to such problems. I briefed you on our working mechanisms several times atlast year's press conferences and these working mechanisms have been further improved. Going forward, we will continue to pay close attention to the production andsales of agricultural products, and, in the principle of making "product based responses at different levels", build and improve the SOS system for the sales of agricultural products, and provide assistance to local governments in taking contingency measures to address those more prominent selling difficulties.

With regard to how to solve the root of reoccurring issues such as selling difficulties and rising prices, or in other words how to establish a lasting mechanism, a topic that is of much interest to the media, MOFCOM will make greater efforts to ensure balanced supply and demand of agricultural products. The goal is to solve selling difficulties and ensure sufficient market supply at the same time. We are taking a three-part approach, targeting issues at the producing areas, distribution centers and destination markets, to find fundamental solutions. First, at distribution centers, we will strengthen the building of wholesale markets there, and give a full play to the role of wholesale markets in connecting producing areas and destination markets. The goal is to build a stable and efficient cross-region production and sales chain. Second, at producing areas, we will strengthen the building of logistics centers to enhance the preservation, storage and transportation capabilities, and work for better coordinated peak marketing times. For example,

we will enhance the storage capabilities at distribution centers, and in the event of excessive supply of a certain agricultural product, we can put these products in storage and market them later when there is a change in the supply-demand dynamics. Third, at destination markets, we will improve such infrastructure as comprehensive processing and distribution centers at wholesale markets of agricultural products and promote promoting the building of urban convenience food markets.

Currently, the overall supply and demand of China's agricultural market is basically balanced now. Of course, individual cases of selling difficulties may occurat some locations due to regional, structural, and temporary imbalances.However, in the medium and long run, the overall agricultural prices will trend upward due to rising costs of agricultural production. We need to focus more on how to build better channels of commerce, reduce costs and ensure supply in order to have a stable market and stable prices. Thank you for your questions.

Agence France-Presse: We know that President Xi Jinping is soon to visit a number of countries, including countries in Africa. However, thegover nor of the Nigerian Central Bank governor recently saidthat it was a typical practice of colonialism thatChina importsprimary products from African countries and sells finished products back to those countries. What's your comment? Could you share with us the latest China-Africa bilateral trade data?

ShenDanyang: We have noticed the article you mentioned, but we do not agree with the governor's opinion. I would recommend that the governor take a good look at the history of colonialism by Western countries. People with

some basic knowledge of the history of colonialism all know that there is a fundamental difference between China-Africa economic and trade cooperation and colonialism. In the past, Western countries plundered Africa's resources, trafficked African people, occupied the land of Africa and destroyed African culture by force and deception, which is the nature of colonialism. For years, China has been providing a variety of assistance to African countries to the best of its capabilities and supporting the economic and social development in Africa, which is obvious to the majority of African people.

China's importing of primary products from African countries is entirely in accordance with international practices and market rules. It can help to break the monopoly by Western countries and promoteAfrica's export diversification so thatAfrica can gain more benefits. In fact, China not only imports primary products but also more and more finished products from African countries. For example, it's reported by CCTV that there is African Commodities Trade Center in theYiwuChina Commodity City in Zhejiang Province where many African friends sell their characteristic finished products. The Chinese government has always attached importance to encouraging Chinese enterprises to use more local equipment and labor in their economic and trade cooperation with African countries. In recent years, increasing Chinese investment in African countries has contributed to the economic growth of the host countries, and increased the tax revenue, created a lot of jobs, and trained a large number of people for African countries. By the end of 2012, The total stock of Chinese direct investment had reached nearly US$ 20 billion, and

in 2012 alone, China's FDI in Africa was nearly US$ 3 billion. There are more than 2,000 Chinese enterprises investing and building factories in Africa and the areas of cooperation have expanded gradually from such traditional sectors as agriculture, mining, and construction to mineral processing, manufacturing, finance, commerce, real estate, and tourism. Some people say that Chinese companies are only developing mines and growing agricultural produce in Africa. The fact speaks differently. Chinese enterprises have expended their investment to manufacturing as well as various kinds of service industries. In 2012, Chinese tourists went to Africa totaled at 870,000 person/times. In order to encourage and support Chinese enterprises to invest in Africa, China has established the China-Africa Development Fund. In the past five years, the China-Africa Development Fund has invested $ 1.84 billion in 61 projects. China has also built six economic and trade cooperation zones in five African countries, where the experiences of the Chinese Development Zone are applied to host large numbers of Chinese companies. The focus is on the processing industry. The six economic and trade cooperation zones in African countries have provided more than 10,000 jobs.

China remains committed to developing trade and economic cooperation with Africa in the principle of equality, mutual benefit and common development. China always matches its words with its deeds.As China-Africa trade and economic cooperation continues its sound development, we believe thatmore and more African friends will come to a clearer and more objective understanding of the positive effects and contributions to Africa made by Sino-African cooperation. Thank you for your question.

CRI: According to some media reports, MOFCOM is the world's youngest mergers and acquisitions regulatory authority, and a regulator that is very easily influenced by political decisions, and that investors find it difficult to understand MOFCOM's positions.Uncertainties resulted from such non-transparency has led to windfall profits for some hedge funds. What's your view on this? Could you please brief us on MOFCOM's antimonopoly review work? Thank you.

ShenDanyang: We havenoticed such reports and comments. I think that these comments are totally groundless and are not fact-based. Since Anti-monopoly Law was formally put into effect in August, 2008, MOFCOM has worked for the promulgation of a serious of supporting laws and regulations covering both procedural aspects such as case filing and review and substantive aspects such as competition review in order to increase enforcement transparency and facilitateimplementation. Those laws and regulations, which provide guidance and convenience, are well known and well spoken of by enterprises and their counsels.

Meanwhile, when conducting anti-monopoly reviews on businessconcentration, MOFCOM strictly complies with the Anti-monopoly Law and other related laws and regulations in terms of both procedure and substance, assesses the impact on competition in accordance with the laws and then makes a decision. During the whole review process, MOFCOM always maintainsgood communications with the enterprises and their counsels. From when the Anti-monopoly Law took effect in 2008 to the end of 2012, MOFCOM received a total of 642 filings for concentration

review. Among them, 585 reviews were initiated, and 540 reviews were concluded. Among the concluded cases, 523 were unconditional approvals, accounting for 96.9% of the total, 16 were conditional approvals, and only one case was disapproved.

In 2012, MOFCOM received 207 filings for concentration reviews, initiated review on 188 cases, and concluded 164 cases. The numbers are at the same level as in 2011. Among the concluded cases, 6 were approved with conditions, 158 were unconditionally approved, accounting for 96.3% of the total, and there was no disapproval. In fact, MOFCOM's decisions on the cases are accepted and respected by the filing enterprises, and its enforcement efforts have been widely acknowledged and received positive comments. MOFCOM is now one of the world's most important law enforcement agencies in the field of concentration review. Thank you for your question.

China Daily: We noticed that China hasn't benefited much from exports according to UNCTAD's new calculation method based on global value chain. Previously, OECD and WTO also reached a similar conclusion using value added estimates. We'd like to hear MOFCOM's comments on it. How shall China's trade imbalance with major economies be viewed from such a perspective? Thank you.

ShenDanyang: WTO, OECD and UNCTAD have put forward in recent years a new concept called "global value chain", which is designed to use value-added trade statistics to measure global trade, and aims to demonstrate the actual international trade pattern in the context of economic globalization and international labordivision, and reflect more accurately the benefits

different countries gainfrom global trade. China has been actively participating in and promoting such studies. In September last year, we co-organized a symposium on this topic in Beijingwith these three organizations.

The current statistical method of international trade calculates the total export value of a product into the export value of the country where the final stage of processing takes place. China has a bigprocessing trade. Based on such a method, the values of semi-finished products and raw materials, regardless of where they come from, are all calculated as part of China's total export value simply because the final processing takes place in China. Such a method doesn't exclude the value added by other countries, and results in overestimates by a large margin of the export value of the final exporting country.

Generally speaking, the export value of a country engaged in product assembly and at the lower end of the global value chain is often vastly overestimated, while that of the country providing parts and components and at the middle of the global value chain is often severely underestimated. According to the studies done by China, China's trade surplus with the US in 2011 was US$202.4 billion when calculated using traditional gross trade value statistics. However, that figure would drop to US$92.6 billion when calculated using added value statistics, down by 54.2%. According to the studies by OECD and WTO, China's trade surplus with the U.S. in 2009 would drop 25% from US$176 billion to US$132 billion by switching from the traditional method to the new method.

Chinese and international experts tend to agree that advancing the studies on global value chain and added value can help to objectively reflect a nation's real trade relations with its major trading partners, as well as the actual scale of its foreign trade, the impact of foreign trade on domestic economic development and employment, the international competitiveness of its industries and where the industries stand in the global value chains. It can also help to point out the right direction for industrial restructuring and upgrading.

There are still on-going studies on global value chain and added value, and no uniform standards and rules have been established. MOFCOM will continue to cooperate with international organizations and China's major trading partners, and promote the further development of relevant studies. Thank you for your question.

ShenDanyang: That concludes today's press conference. Thank you.

SELECTED FILINGS IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DIPLOMATIC NOTE FROM THE EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA TO THE UNITED STATES DEPARTMENT OF STATE, DATED APRIL 9, 2014

EMBASSY OF THE PEOPLE'S
REPUBLIC OF CHINA
3505 International Place, N.W.
Washington, D.C. 20008

CE027/14

The Embassy of the People's Republic of China presents its compliments to the Department of State of the United States of America and has the honor to inform the latter that the Chinese Government would like to call upon the U S. Administration to note an appeal now pending in the United States Court of Appeals for the Second Circuit, No. 13-4791. In this case, two Chinese companies appeal from a judgment rendered by the U.S. Federal District Court in the Vitamin C Antitrust Litigation.

China has attached great importance to this case. The Chinese Ministry of Commerce submitted an amicus brief to the U.S. Federal District Court in June 2006. This brief, and two subsequent statements submitted by the Chinese Ministry of Commerce, described China's compulsory requirements concerning vitamin C exports and explicitly notified the U.S. Federal District Court that the conduct of the Chinese enterprises is a result of their obligations

to comply with Chinese law requirements, instead of a conduct of their own volition.

China takes note that, according to U.S. law and judicial practice, a statement by a foreign government concerning its own domestic law must be regarded as "conclusive" in U.S. courts, or at least treated with considerable deference and respect. The U.S. Federal District Court stated, however, that it would not defer to the statements of the Chinese Ministry of Commerce and would instead make its own independent assessment of Chinese law. Based on this independent assessment, the U.S. Federal District Court determined, incorrectly, that defendants' conduct was voluntary.

The resulting judgment is contrary to the "foreign sovereign compulsion" doctrine of U.S. antitrust law, which provides complete immunity for acts committed within the borders of another sovereign if such acts are compelled by the laws of that sovereign, and is contrary to the act of state doctrine and international comity principles as well.

China calls upon the U.S. Administration to take note that the Chinese Ministry of Commerce will file an amicus brief to the Court of Appeals once more to reiterate the positions it stated regarding this litigation and to assist the Court of Appeals' consideration of the case. The Chinese Government urges the U.S. Administration also to file a brief in the Court of Appeals in support of China's positions. U.S. counsel for the Chinese Ministry of Commerce, located in Washington D.C., also has prepared a memorandum to assist the U.S. Administration in its consideration of this case.

The Embassy of the People's Republic of China avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, DC, April 9, 2014

Department of State
United States of America
Washington DC